

STATE OF NEW YORK

10424

IN SENATE

May 15, 2026

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to enacting the "fair authorized investment returns act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "fair authorized investment returns act".

3 § 2. Legislative findings. The legislature finds and declares all of
4 the following:

5 1. Investor-owned electric, gas, and water utilities are entitled to a
6 reasonable opportunity to earn a fair return on their invested capital,
7 but ratepayers should not bear costs that exceed the level necessary to
8 attract capital under prevailing market conditions. A return on equity
9 authorized above the minimum rate of return necessary to attract capital
10 investment results in charges to ratepayers that are unjust and unrea-
11 sonable.

12 2. Authorized returns on equity over and above the minimum rate of
13 return necessary to attract capital investment -- the cost of capital --
14 harm ratepayers in multiple ways, including the direct cost of excess
15 returns passed on to ratepayers, the incremental corporate income taxes
16 owed on those excess returns, and the further costs that flow from the
17 well-documented Averch-Johnson effect, by which too-high rates of return
18 on equity create incentives for utilities to over invest in capital
19 assets.

20 3. The Capital Asset Pricing Model, applied to the low market beta of
21 regulated utility equities relative to broad market indices, suggests
22 that a premium to the 10-Year Treasury risk-free rate of less than two
23 percent is warranted. Discounted cash flow analysis leads to a similar
24 conclusion.

25 4. The significant premium to book value at which the holding compa-
26 nies of most utilities trade provides further evidence that authorized
27 returns on equity are above utilities' cost of equity. As a matter of

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

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1 financial principle, a utility earning a return on equity equal to its
2 cost of equity should trade at approximately book value.

3 5. That the return on equity awarded to regulated utilities in this
4 state is broadly consistent with those awarded in other jurisdictions
5 does not dispel these concerns. Rather, these consistently excessive
6 returns reflect a rate-setting process in which regulators in each
7 jurisdiction reference what other jurisdictions have awarded.

8 6. More broadly, these excessive returns and premium valuations are a
9 predictable consequence of the well-documented phenomenon of regulatory
10 capture and capital bias, as explored in the foundational work of George
11 Stigler (Nobel Prize, 1982) and Jean Tirole (Nobel Prize, 2014). The
12 regulated entities subject to commission oversight can devote substan-
13 tial resources to influencing regulatory outcomes that determine their
14 profitability -- including the hiring of experts to advance favorable
15 interpretations of otherwise straightforward financial models, the main-
16 tenance of revolving-door employment relationships with former regula-
17 tors, and extensive "educational" engagement with regulatory staff --
18 while ratepayer interests are represented by comparatively limited
19 resources. Process enhancements such as mandating more sophisticated
20 analytical models will not resolve this imbalance, because the problem
21 is not which analytical tools are used but how their inputs are chosen.

22 7. These excessive returns translate to a substantial burden upon
23 ratepayers. Across the country, utilities earn excess profits that go
24 beyond their entitled reasonable returns, amounting to approximately
25 five hundred dollars extra per household annually. Soaring rates place a
26 growing share of households at risk of service disconnection. Businesses
27 are also impacted, as high rates disadvantage them relative to compet-
28 itors based elsewhere.

29 8. The current process by which the public service commission and
30 regulated utilities set rates has historically been inaccessible and
31 indecipherable to the public and often runs contrary to the stated goals
32 of ensuring affordable, safe, secure, and reliable utility service for
33 residential and business consumers.

34 9. The default authorized return established by this act -- equal to
35 the 10-Year Treasury plus 200 basis points -- is set at a level the
36 legislature finds to be at or above the cost of equity for most covered
37 utilities under prevailing market conditions, based on the financial
38 evidence described in subdivisions three and four of this section. At
39 current treasury rates, this formula produces an authorized return above
40 what financial models indicate is required to attract capital for regu-
41 lated utility equity having the risk profile of a typical covered utili-
42 ty. The 200 basis point premium is designed to ensure that, for the
43 large majority of covered utilities in ordinary circumstances, the
44 default authorized return is not confiscatory, while still representing
45 a significant reduction from the historically excessive returns that the
46 current regulatory process has produced. The legislature recognizes that
47 market conditions may change over time and that what constitutes an
48 adequate return will vary accordingly; this act's annual reset mechanism
49 ensures that the treasury component of the default authorized return
50 tracks prevailing market conditions.

51 10. A competitive equity auction conducted pursuant to section twen-
52 ty-eight-c of the public service law that produces an authorized return
53 on equity above the default authorized return does not by itself estab-
54 lish that the default authorized return is confiscatory or below the
55 constitutional minimum. In the early period following enactment,
56 auction-clearing returns may exceed the default authorized return in

1 part because investors are unfamiliar with these instruments and require
2 a premium return to compensate for that unfamiliarity -- a premium that
3 the legislature expects to decline as these instruments become estab-
4 lished in the capital markets. Even in this transitional period, the
5 availability of the auction mechanism ensures that no covered utility is
6 required to operate under a return below what willing investors, in a
7 competitive process, have determined to be adequate compensation for the
8 associated risk. This act's true-up provisions further ensure that any
9 covered utility that conducts an auction is made whole for the period
10 during which the default authorized return was in effect, so that no
11 covered utility suffers a permanent confiscatory outcome.

12 11. The default authorized return and the competitive equity auction
13 mechanism, taken together, satisfy the constitutional standard artic-
14 ulated in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S.
15 591 (1944), and *Bluefield Waterworks & Improvement Co. v. Public Service*
16 *Commission of West Virginia*, 262 U.S. 679 (1923), by ensuring that every
17 covered utility has both a presumptively adequate default return and an
18 opportunity to demonstrate, through competitive market evidence, that a
19 higher return is required. Sealed-bid uniform-price auctions are widely
20 used in capital markets, including for the issuance of U.S. Treasury
21 securities, and the competitive pricing mechanism established by this
22 act is functionally equivalent to processes that operate successfully in
23 debt and equity markets worldwide. Sealed-bid uniform-price auctions are
24 also the mechanism by which the Federal Communications Commission allo-
25 cates electromagnetic spectrum and by which regional transmission organ-
26 izations such as PJM Interconnection and ISO New England procure elec-
27 tric generation capacity. The application of this well-established
28 mechanism to the determination of utility equity costs is novel, but the
29 mechanism itself is proven across multiple regulated markets.

30 12. When competitive markets exist and function effectively, market
31 prices can provide the information required to protect consumers from
32 price gouging. Regulatory discretion is warranted when markets fail to
33 function effectively. In the case of utility debt, commissions do not
34 convene adjudicatory proceedings to determine a "reasonable" bond yield;
35 they incorporate the market-determined coupon rate because a competitive
36 debt market provides reliable evidence of the cost of debt. This act
37 applies the same principle to equity: where a competitive auction can
38 provide direct, transaction-level evidence of the return investors
39 require to supply equity capital to a regulated utility, that evidence
40 is superior to any estimate produced by expert testimony applying
41 contested financial models. A covered utility is no more entitled to
42 demand a judicially supervised determination of its equity cost than it
43 is to demand such a determination of its debt cost. State legislatures
44 routinely establish formulaic rate structures by statute, including
45 avoided-cost requirements under the Public Utility Regulatory Policies
46 Act of 1978, net metering compensation rates, and feed-in tariff sched-
47 ules. This act follows established precedent in codifying a formulaic
48 approach that reduces regulatory discretion while preserving the public
49 service commission's authority over implementation, auction adminis-
50 tration, and ratemaking mechanics.

51 13. Covered utilities, as recipients of state-granted monopoly fran-
52 chises serving the public, have accepted obligations of transparency and
53 public accountability that are not imposed on ordinary private enter-
54 prises. The disclosure requirements that attend a securities offering
55 conducted pursuant to this act serve the public interest by making the
56 financial condition, operations, and risks of covered utilities more

transparent to regulators, ratepayers, and the public at large. Such transparency is itself consistent with, and supportive of, effective cost-of-service regulation, and the legislature finds that the public benefit of enhanced utility disclosure is substantial. It is the intent of this act that all reasonable costs incurred by a covered utility in connection with a competitive equity auction, including any registration and offering costs, management time reasonably allocable to the auction process, and professional fees, be recoverable in rates as set forth in section twenty-eight-c of the public service law. The legislature further finds that such costs are expected to be substantially less than the expert testimony, legal, and other costs currently incurred by covered utilities and ratepayers in litigating return-on-equity determinations in administrative rate proceedings.

14. This act does not require covered utilities to issue equity. The competitive equity auction mechanism is initiated at the option of the covered utility, as a means of demonstrating that its cost of equity exceeds the default authorized return. Unless the covered utility elects otherwise, auction equity interests issued pursuant to this act do not carry voting rights with respect to the affairs of the covered utility or any regulated service corporation or regulated service LLC, and do not otherwise entitle holders to participate in the governance of the covered utility. Covered utilities are already routinely required to issue debt instruments on market-determined terms, the cost of which is incorporated into rates without a separate adjudicatory determination of "reasonable" debt cost. The competitive equity auction is the equitable equivalent for equity: it allows the market to determine the minimum return required by investors under competitive conditions, in precisely the same manner that bond markets determine the minimum return required by lenders. A covered utility that chooses not to petition for an auction retains the default authorized return, which the legislature has determined to be adequate for most covered utilities under prevailing conditions. The legislature further finds that the auction equity interest is economically similar to tracking stock -- an instrument familiar to institutional investors -- and that the predictability of regulated utility revenue streams makes this instrument well suited to certain investors, including pension funds and insurance companies.

15. Any impact of a lower authorized return on equity on credit ratings can, if necessary, be offset by adjusting the authorized debt-to-equity ratio applicable to each regulated service. Under this act, the authorized capital structure is determined at the level of each regulated service rather than at the level of the covered utility as a whole, and it is the intent of this act that the public service commission set and adjust such capital structure as may be necessary to maintain financial soundness and continued access to capital markets. The legislature further finds that credit rating agencies evaluate regulated utilities on a multi-factor basis in which the authorized return on equity is one input among many, and that the entity structure established by this act -- including bankruptcy remoteness, ring-fencing, and dedicated revenue streams -- is designed to strengthen the credit profile of the regulated service relative to the covered utility's unsegregated balance sheet.

16. The competitive equity auction mechanism established by this act is designed to discover the return investors require on each regulated service's capital. For that price signal to be accurate, the rate base to which the authorized return on equity is applied must correspond to the capital that investors have supplied. Under current regulatory prac-

tice, certain prudent investments -- most notably construction work in progress -- are routinely excluded from a utility's rate base until the associated assets are placed in service, even though investors have already committed capital to finance those projects. This exclusion creates a divergence between rate base and actual invested capital that distorts the auction signal: investors who cannot predict the magnitude of the exclusion at the time they bid cannot accurately price the effective return on their capital, introducing noise and uncertainty that increases the cost of equity for ratepayers. The exclusion of construction work in progress from rate base also creates a systematic bias in utility capital allocation. Because utilities earn no cash return on capital invested in projects that have not yet been placed in service, they face a financial incentive to favor projects that can be completed quickly over projects that may deliver greater long-term value to the public but require longer construction periods. Large-scale transmission infrastructure, grid modernization programs, and generation projects essential to the energy transition are disproportionately disadvantaged by this incentive structure. Including construction work in progress in rate base eliminates this bias and ensures that capital allocation decisions are driven by the long-term public interest rather than by the timing of regulatory cost recovery. This act accordingly requires that rate base reflect the full value of prudently invested capital, with the sole exclusions being for capital that is not supplied by investors -- namely, accumulated deferred income taxes, customer deposits, and customer advances for construction.

17. The legislature finds that ratepayers will benefit from this act beginning immediately upon enactment. The formation of regulated service corporations and regulated service LLCs will require a transitional period during which a covered utility's existing capital structure is restructured. During this transitional period, certain costs -- including any guaranty fee payable to the covered utility in connection with debt assumed by a regulated service LLC -- will modestly reduce the savings that ratepayers would otherwise realize. These transitional costs are expected to be small relative to the savings from lower authorized returns on equity and to diminish over time as assumed indebtedness matures and is refinanced at the regulated service LLC level without a covered utility guaranty. Similarly, the expansion of rate base required by subdivision twenty-eight-b of the public service law to reflect all prudently invested capital, including construction work in progress, viewed in isolation, increases the dollar amount to which the authorized return is applied; but the authorized return itself is reduced by a substantially greater magnitude, such that the product of the two -- which determines the total return component of rates -- is lower under this act than under current practice. The legislature recognizes that the day-one net savings may be smaller for covered utilities with unusually large construction work in progress balances than for those without, and that the magnitude of net savings will vary over time with the pace of utility capital investment; in no case, however, will the combined effect increase the total return component of rates above what current practice would produce for the same utility. The long-run benefits of aligned capital allocation incentives, as described in subdivision sixteen of this section, supplement these immediate rate savings. So too do the progressively lower auction-clearing returns the legislature anticipates as investors become more familiar with the instruments auctioned.

18. The restructuring authority established by this act, including the authority to require assumption of allocated indebtedness by a regulated service LLC notwithstanding contrary provisions of existing debt instruments, is a legitimate exercise of the state's police power in furtherance of the public interest in affordable and reliable utility service. The contractual impairment, if any, is reasonable and narrowly tailored: requiring individual bondholder consent for a credit-neutral restructuring would create a holdup problem enabling bondholders to extract rents from ratepayers without bearing additional risk. Moreover, this act prospectively requires all new long-term indebtedness to include transfer covenants, so that the override applies only to legacy obligations -- a diminishing pool that will be eliminated through ordinary refinancing cycles.

§ 3. The public service law is amended by adding a new article 1-A to read as follows:

ARTICLE 1-A

FAIR AUTHORIZED INVESTMENT RETURNS ACT

Section 28-a. Definitions.

28-b. Default authorized return on equity.

28-c. Competitive equity auctions.

29-d. Reporting and transparency.

§ 28-a. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Authorized return on equity" means the rate of return on common equity authorized for ratemaking purposes.

2. "Competitive equity auction" means a process overseen by the commission in accordance with this article that provides a market-based determination of the cost of equity for a covered utility.

3. "Covered utility" means any investor-owned electric, gas, or water corporation regulated by the commission.

4. "Regulated service" means a distinct category of utility service, including, but not limited to, electric distribution, gas distribution, or water service; provided by a covered utility and for which the commission determines an authorized return on equity. Where a covered utility provides more than one category of service subject to the jurisdiction of the commission, each such category shall be treated as a separate regulated service for purposes of this article unless the commission determines that consolidated treatment is appropriate.

5. "Cost of equity" means the minimum rate of return necessary to attract equity capital to invest in a specific regulated service.

6. "Default authorized return" means the authorized return on equity determined pursuant to section twenty-eight-b of this article.

7. "Ten-year treasury" means the market yield on U.S. treasury securities at ten-year constant maturity, quoted on an investment basis, as reported by the Federal Reserve System.

8. "Rate period" means the time period in which a covered utility collects rates that are authorized and approved by the commission.

9. "Auction-clearing return" means the uniform rate of return established as the clearing price in a competitive equity auction conducted pursuant to subdivision five of section twenty-eight-c of this article.

10. "Auction equity interest" means an economic interest issued pursuant to a competitive equity auction under section twenty-eight-c of this article. An auction equity interest represents a participation in the financial performance of a specific regulated service, carries the auction-clearing return as adjusted pursuant to subdivision three of section twenty-eight-c of this article, and is distinct from the covered

1 utility's base common stock. The authorized return and financial
2 performance of any auction equity interest shall be determined solely by
3 reference to the regulated service to which it relates, and shall not be
4 affected by the financial performance of, or returns applicable to, any
5 other regulated service or any activity of the covered utility not
6 subject to the jurisdiction of the commission. Except where auction
7 equity interests are issued by a regulated service corporation estab-
8 lished pursuant to subdivision eleven of section twenty-eight-c of this
9 article, the risk profile of auction equity interests is not so limited:
10 auction equity interests issued directly by the covered utility are
11 obligations of the covered utility and are therefore subject to all
12 risks applicable to the covered utility generally, including the risk of
13 insolvency or bankruptcy of the covered utility. Where a covered utility
14 has established a regulated service corporation and regulated service
15 LLC pursuant to subdivision eleven of section twenty-eight-c of this
16 article auction equity interests shall be issued by such regulated
17 service corporation rather than by the covered utility itself, and
18 references in this definition to the "covered utility's base common
19 stock" shall be construed to mean the stock of such regulated service
20 corporation retained by the covered utility.

21 11. "Regulated service corporation" means a corporation organized
22 under the laws of any state, formed or designated by a covered utility
23 pursuant to subdivision eleven of section twenty-eight-c of this
24 section, that: (a) is treated as a corporation for federal income tax
25 purposes; and (b) conducts no activities other than holding a membership
26 interest in a regulated service LLC and serving as the issuer of auction
27 equity interests for the regulated service associated with that regu-
28 lated service LLC.

29 12. "Regulated service LLC" means a wholly-owned limited liability
30 company subsidiary of a regulated service corporation, formed or desig-
31 nated pursuant to subdivision eleven of section twenty-eight-c of this
32 article, to hold assets, rights, franchises, and obligations associated
33 with a regulated service. A regulated service LLC shall be treated as a
34 disregarded entity for federal income tax purposes.

35 § 28-b. Default authorized return on equity. 1. Unless an authorized
36 return on equity is established pursuant to section twenty-eight-c of
37 this article, the commission shall set the authorized return on a
38 covered utility's common equity equal to the sum of: (a) the ten-year
39 treasury; and (b) two percent.

40 2. The default authorized return shall be reset annually as of January
41 first of each year to reflect the average of the ten-year treasury rate
42 on the sixty business days immediately prior to January first of that
43 year.

44 3. Should publication of the ten-year treasury cease or be inter-
45 rupted, the commission shall identify and use for this calculation the
46 alternative benchmark it determines to be the best substitute.

47 4. The burden of demonstrating that the default authorized return on
48 equity is insufficient to attract capital shall rest exclusively with
49 the covered utility. The default authorized return shall be presumed
50 just and reasonable unless rebutted through the competitive equity
51 auction process set forth in section twenty-eight-c of this article.

52 5. For any rate period commencing between the effective date of this
53 section and the first reset date under subdivision two of this section,
54 the ten-year treasury component shall be determined using the averaging
55 methodology prescribed in subdivision two of this section, applied to

1 the sixty business days immediately preceding the effective date of this
2 section.

3 6. Whenever the authorized return on equity for a regulated service
4 changes pursuant to this section or section twenty-eight-c of this arti-
5 cle, the commission shall adjust the rates applicable to such regulated
6 service to reflect the new authorized return on equity. Such adjustment
7 shall be implemented through the mechanism the commission determines to
8 be most expedient, which may include but need not be limited to a
9 surcharge or credit applied to existing tariffs, an automatic rate
10 adjustment mechanism, or incorporation into the covered utility's next
11 general rate proceeding. The commission shall implement any such adjust-
12 ment no later than ninety days after the change in authorized return on
13 equity takes effect.

14 7. Nothing in this section shall preclude a covered utility from
15 procuring third-party insurance to hedge material idiosyncratic risks,
16 with the cost thereof recoverable in rates as an operating expense
17 subject to the commission's determination of prudence.

18 8. For purposes of this subdivision, a "performance-based ratemaking
19 plan" means a plan, mechanism, or order that adjusts the authorized
20 return on equity of a covered utility based on measured utility perform-
21 ance against specified benchmarks; it does not include revenue decoupl-
22 ing mechanisms, formula rate plans, or other mechanisms that operate on
23 revenue, cost recovery, or rate design without adjusting the authorized
24 return on equity. Nothing in this section shall preclude the commission
25 from establishing or maintaining a performance-based ratemaking plan for
26 a covered utility, provided that: (a) any such plan is designed so that
27 the expected value of performance-based adjustments to the authorized
28 return on equity is neutral; and (b) no such plan shall permit the
29 aggregate effect of performance-based adjustments to increase the
30 covered utility's realized return on equity for any regulated service by
31 more than two percentage points above the authorized return on equity
32 for that regulated service as determined under this section.

33 9. For purposes of determining the authorized return on equity for any
34 regulated service of any covered utility under this section, whether
35 such return is determined under this section or pursuant to a compet-
36 itive equity auction under section twenty-eight-c of this article, the
37 commission shall determine rate base so as to reflect the full value of
38 all assets prudently invested by or on behalf of the covered utility for
39 the benefit of the regulated service, including construction work in
40 progress, net of accumulated depreciation. The only reductions to rate
41 base shall be for capital that is not supplied by investors, which shall
42 be limited to: (a) accumulated deferred income taxes, to the extent that
43 deferred tax liabilities exceed deferred tax assets; (b) customer depos-
44 its; and (c) customer advances for construction. The commission shall
45 not exclude from the rate base of any regulated service any asset on the
46 basis that it has not yet been placed in service, provided that the
47 investment has been determined to be prudent and is being undertaken for
48 the benefit of the regulated service. This subdivision shall apply to
49 every covered utility upon the effective date of this section, without
50 regard to whether a regulated service corporation or regulated service
51 LLC has been formed pursuant to subdivision eleven of section twenty-
52 eight-c of this article, and shall govern any determination of the
53 authorized return on equity made under this section thereafter.

54 § 28-c. Competitive equity auctions. 1. Should a covered utility
55 believe that its cost of equity exceeds the default authorized return,
56 it may petition the commission to oversee a competitive equity auction.

This petition shall be deemed withdrawn, and the covered utility deemed to have accepted the default authorized return, if the covered utility fails to take all steps required to facilitate such auction, as set forth by the commission, on the timeline prescribed for each such step. A petition under this subsection must be filed no later than thirty days after the later of: (a) the effective date of this section; or (b) the most recent reset of the default authorized return under subdivision two of section twenty-eight-b of this article. Upon certification of the auction results by the commission, the auction-clearing return shall become the authorized return on equity for the regulated service, and the commission shall adjust customer rates in accordance with subdivision six of section twenty-eight-b of this article no later than ninety days after such certification. The commission shall also implement a true-up adjustment, calculated as the difference between: the revenue actually collected by the covered utility during the period from the filing of the petition through the date on which adjusted rates take effect; and the revenue that would have been collected during that period had the auction-clearing return been reflected in rates throughout. Interest on any such difference shall accrue at the auction-clearing return, calculated from the midpoint of such period. For the avoidance of doubt, any adjustment to customer rates required by the reset of the default authorized return under subdivision two of section twenty-eight-b of this article shall be implemented in accordance with subdivision six of such section independently of any auction petition, and the true-up under this subdivision shall apply only to the period commencing on the date of the petition.

2. The commission may, on its own motion or upon petition by the attorney general, order that a competitive equity auction be conducted for a covered utility if the commission finds reasonable cause to believe that the default authorized return materially exceeds the covered utility's cost of equity for a regulated service. A commission-initiated auction under this subdivision may be ordered no earlier than thirty days after the later of: (a) the effective date of this section; or (b) the most recent reset of the default authorized return under subdivision two of section twenty-eight-b of this article, and no later than sixty days after such reset. Upon certification of the auction results, the auction-clearing return shall become the authorized return on equity for the regulated service, and the commission shall adjust customer rates in accordance with subdivision two of section twenty-eight-b of this article no later than ninety days after such certification. The commission shall also implement a true-up adjustment, calculated as the difference between: the revenue actually collected by the covered utility during the period from January first of the year in which the auction is conducted through the date on which adjusted rates take effect; and the revenue that would have been collected during that period had the auction-clearing return been reflected in rates throughout. Interest on any such difference shall accrue at the auction-clearing return, calculated from the midpoint of such period. Should the covered utility fail to take all steps required to facilitate an auction ordered pursuant to this subdivision on the timeline prescribed by the commission, the default authorized return for that regulated service shall be reduced by a tenth of one percent percentage points, effective as of the date of such failure and continuing until the covered utility has complied. If the covered utility fails to facilitate a subsequent commission-initiated auction for the same regulated service, such reduction shall be cumulative. Upon compliance, any reduction under this

1 paragraph shall cease to apply prospectively; no retroactive adjustment
2 shall be made for any period during which the reduction was in effect.

3 3. Holders of auction equity interests issued pursuant to an auction
4 shall receive the auction-clearing return, as adjusted for differences
5 between realized and anticipated profits in a manner to be specified by
6 the commission in its order governing the auction, for the full duration
7 of such interests. This rate of return, whether higher or lower than the
8 default authorized return, shall determine the authorized return on
9 equity for the regulated service, in accordance with subdivision four of
10 this section, until the following January first, at which time the
11 covered utility may elect that the default authorized return shall apply
12 to the covered utility's common equity in the regulated service. Any
13 such election shall not affect the return applicable to outstanding
14 auction equity interests, which shall continue to receive the auction-
15 clearing return for the full duration of such interests. Following such
16 an election, the authorized return on equity for the regulated service
17 shall be determined in accordance with subdivision four of this section.

18 4. Where different equity interests in a regulated service bear
19 different authorized rates of return -- whether because multiple
20 auctions have been conducted at different times or because the covered
21 utility has elected pursuant to subdivision three of this section that
22 the default authorized return shall apply to its common equity; the
23 authorized return on equity for the regulated service shall be the
24 weighted average of the return applicable to each equity interest,
25 weighted by its outstanding equity amount. For this purpose, the covered
26 utility's common equity shall bear the auction-clearing return estab-
27 lished in the most recent auction, or, following an election under
28 subdivision three of this section, the default authorized return. Where
29 no auction equity interests remain outstanding, the default authorized
30 return shall apply to the full equity component of the regulated
31 service.

32 5. (a) The commission shall oversee a sealed-bid competitive auction,
33 to be administered independent of the covered utility. The commission
34 shall determine for each auction whether bids are to be expressed as an
35 absolute number or as a premium to the ten-year treasury or another such
36 index, with the applicable interest rate to be reset periodically.
37 Qualified bidders shall bid the minimum target return on equity they
38 require. Bids shall be ranked in ascending order and the commission
39 shall accept bids in that order until the total amount of equity offered
40 in the auction has been fully allocated. All successful bidders shall
41 receive the same rate of return, equal to the highest accepted bid. If
42 the aggregate amount bid at the clearing rate exceeds the remaining
43 amount of equity to be allocated, such bids shall be accepted on a pro
44 rata basis. For the avoidance of doubt, all bids submitted at returns
45 below the clearing rate shall be accepted in full; the pro-rata
46 reduction applies only to bids submitted at the clearing rate itself.

47 (b) The amount of equity to be offered in each auction shall be the
48 greater of: (i) two and one-half percent of the equity component of the
49 regulated service rate base; and (ii) the lesser of fifty million
50 dollars and five percent of the equity component of the regulated
51 service rate base.

52 (c) The commission shall certify the results of an auction if: at
53 least five qualified bidders submitted bids; and the aggregate equity
54 amount bid by all qualified bidders was at least one and one-half times
55 the total equity amount offered in the auction. If either threshold is
56 not met in a utility-initiated auction under subdivision one of this

1 section, the auction result shall nonetheless be certified if the
2 auction-clearing return does not exceed the default authorized return by
3 more than two percentage points; otherwise, the auction result shall be
4 void and the default authorized return shall apply. If either threshold
5 is not met in a commission-initiated auction under subdivision two of
6 this section, the auction result shall be void and the default author-
7 ized return shall continue to apply. In any commission-initiated auction
8 under subdivision two of this section, regardless of whether the partic-
9 ipation thresholds are met, the auction result shall be binding only if
10 the auction-clearing return is less than the default authorized return;
11 if the auction-clearing return equals or exceeds the default authorized
12 return, the default authorized return shall continue to apply. If the
13 aggregate equity amount bid in an auction is less than the total equity
14 amount offered, the auction-clearing return shall apply to the equity
15 amount actually subscribed and the default authorized return shall apply
16 to the remainder, with the authorized return on equity for the regulated
17 service determined in accordance with subdivision four of this section.

18 (d) All reasonable costs incurred by a covered utility in connection
19 with a competitive equity auction under this section, whether initiated
20 by the covered utility under subdivision one of this section or ordered
21 by the commission under subdivision two of this section, including costs
22 of any required securities registration or offering preparation, reason-
23 able management time allocable to the auction, and professional fees,
24 shall be treated as prudently incurred costs for ratemaking purposes and
25 shall be recoverable in rates.

26 6. Any auction shall be conducted by an independent auction adminis-
27 trator pursuant to guidelines promulgated by the commission. The commis-
28 sion may adopt regulations as necessary to implement the competitive
29 equity auction process, including rules governing what constitutes a
30 complete application, the form and timing of the bidder qualification
31 process, and consumer protection provisions. Such regulations shall
32 require the independent auction administrator to disclose to all quali-
33 fied bidders, in advance of each auction, the conditions under which the
34 auction result will be binding, including whether the auction is utili-
35 ty-initiated or commission-initiated and the consequences thereof for
36 bid acceptance.

37 7. The economic interests offered pursuant to this section may consti-
38 tute securities within the meaning of the Securities Act of 1933, as
39 amended, and the Securities Exchange Act of 1934, as amended. Each
40 auction shall be structured so as to qualify for an available exemption
41 from registration under federal securities law. Permissible exemptions
42 include limiting the offering to accredited investors pursuant to Rule
43 506 of Regulation D under the Securities Act of 1933, or conducting an
44 intrastate offering exempt under Section 3(a)(11) of that Act and appli-
45 cable rules thereunder. This default minimizes compliance costs for the
46 covered utility and avoids delays attributable to SEC registration
47 review. The commission may, in its discretion, direct that a specific
48 auction be conducted on a registered basis if the commission determines,
49 based on the expected size of the offering and an analysis of antic-
50 ipated investor demand, that: the expected reduction in the auction-
51 clearing return attributable to broader investor participation enabled
52 by registration is reasonably expected to outweigh the costs and delays
53 of the registration process; and the auction will not be delayed by more
54 than thirty days beyond the timeline that would apply to an exempt
55 offering. Because registration in practice requires substantial lead
56 time, any such direction shall be issued by the commission sufficiently

1 in advance of the covered utility's auction petition to permit timely
2 registration. In all events, the covered utility shall be entitled to
3 recover all reasonable registration costs in rates pursuant to this
4 section. The commission shall, as part of its implementing regulations,
5 address: ongoing disclosure obligations applicable to the covered utili-
6 ty and to holders of auction equity interests; and the duties and requi-
7 site expertise of the independent auction administrator required under
8 subdivision six of this section. Nothing in this subdivision shall be
9 construed to confer upon the commission any authority to regulate secu-
10 rities except as expressly provided in this article.

11 8. (a) The covered utility need not offer its common stock for sale in
12 the auction, but the auction equity interests offered shall, in the
13 judgment of the commission, provide prospective investors:

14 (i) economically equivalent position to that of the covered utility's
15 equity interest in the regulated service: being the covered utility's
16 common stock where auction equity interests are issued directly by the
17 covered utility; or the covered utility's retained stock interest in the
18 regulated service corporation where such interests are issued by a regu-
19 lated service corporation established pursuant to subdivision eleven of
20 this section;

21 (ii) adequate protections against dilution or impairment of value
22 through related-party transactions or other transfers involving the
23 corporation's parent holding company;

24 (iii) prospective periodic distributions calibrated so that, if the
25 covered utility's realized profits of the regulated service in each
26 period equal those embedded by the commission in the rates approved to
27 achieve the authorized return on equity, holders of auction equity
28 interests will realize an internal rate of return equal to the auction-
29 clearing return, taking into account all periodic distributions and any
30 return of equity capital over the life of the interests;

31 (iv) a stated initial equity amount per auction equity interest equal
32 to the purchase price paid by the winning bidder in the auction, with
33 such equity amount to be returned to holders over the life of the inter-
34 ests at a rate and on a schedule consistent with the commission's treat-
35 ment of rate base depreciation and amortization for the regulated
36 service for ratemaking purposes, such that as the equity component of
37 the regulated service rate base is reduced through depreciation and
38 amortization, a commensurate portion of the initial equity amount is
39 returned to holders; and

40 (v) a specification, to be set forth in the instrument terms and
41 confirmed in the commission's order governing the auction, of how short-
42 falls and excesses in realized profits of the regulated service relative
43 to the earnings embedded in approved rates are to be allocated as
44 between: holders of auction equity interests; and the covered utility's
45 common equity, and, in the event of multiple outstanding series of
46 auction equity interests, among such series. Such specification shall
47 provide that any shortfall or excess in realized profits of the regu-
48 lated service shall be allocated among all equity interests in the regu-
49 lated service, including the covered utility's common equity and each
50 outstanding series of auction equity interests, in proportion to the
51 earnings that each such interest would have received had realized
52 profits been exactly equal to the earnings embedded in approved rates.
53 No interest shall have priority over any other in such allocation. For
54 the avoidance of doubt: each interest participates in shortfalls as well
55 as excesses; there is no seniority or preference among auction equity
56 interests of different series or between auction equity interests and

1 the covered utility's common equity with respect to the allocation of
2 shortfalls or excesses; and by way of illustration, if a single series
3 of auction equity interests would have been credited \$X, and the covered
4 utility's common equity would have been credited \$Y, had earnings been
5 exactly as forecast, but realized profits are \$Z, then the auction equi-
6 ty interest series shall be credited $\$Z \times X / (X + Y)$ and the covered
7 utility's common equity shall be credited $\$Z \times Y / (X + Y)$. Where
8 multiple series of auction equity interests are outstanding, the same
9 proportionate allocation applies among all series and common equity,
10 based on each interest's forecast-earnings share.

11 (b) The commission's order governing each auction shall specify the
12 initial equity amount per auction equity interest, the formula for
13 calculating periodic distributions by applying the auction-clearing
14 return to the outstanding equity balance for each period, and the sched-
15 ule for return of equity capital, all in a manner consistent with
16 subparagraphs (iii) and (iv) of paragraph (a) of this subdivision and
17 designed to ensure that, if the covered utility's realized profits of
18 the regulated service in each period equal those embedded in the rates
19 approved to achieve the authorized return on equity, holders of auction
20 equity interests will realize an internal rate of return equal to the
21 auction-clearing return.

22 (c) Each series of auction equity interests shall be redeemed at its
23 then-current book value at the earlier of: forty years from the date of
24 issuance; or the end of the first fiscal quarter in which the outstand-
25 ing equity amount of such series is less than five percent of the
26 initial equity amount at issuance. The covered utility or regulated
27 service corporation, as applicable, shall fund such redemption, whether
28 through retained earnings, a capital contribution from the covered util-
29 ity's parent company, or any other source of equity capital. Upon such
30 redemption, the equity represented by the redeemed series shall revert
31 to the covered utility's common equity in the regulated service. The
32 commission may defer the mandatory redemption date by up to two years
33 upon a showing by the covered utility that immediate redemption would
34 materially impair its financial condition.

35 (d) In the event of any merger, acquisition, or change of control of
36 the covered utility or, where applicable, the regulated service corpo-
37 ration, the successor entity shall assume all obligations to holders of
38 outstanding auction equity interests on terms no less favorable than
39 those in effect immediately prior to such transaction. No such trans-
40 action shall be consummated without a determination by the commission
41 that the rights of holders of auction equity interests will be adequate-
42 ly preserved. The commission may require the terms of each series of
43 auction equity interests to include a provision entitling holders to
44 redemption at then-current book value upon any change of control, at the
45 option of the holder.

46 (e) In the event of the insolvency or dissolution of a regulated
47 service corporation or regulated service LLC, or the permanent discon-
48 tinuation of the regulated service to which auction equity interests
49 relate, outstanding auction equity interests shall participate in any
50 distribution of remaining assets on a pari passu basis with the covered
51 utility's common equity in the regulated service, in proportion to their
52 respective outstanding equity amounts, in accordance with subparagraph
53 (v) of paragraph (a) of this subdivision. Nothing in this paragraph
54 shall be construed to create any priority or preference in favor of, or
55 against, holders of auction equity interests relative to the covered
56 utility's common equity.

1 9. The auction shall be open, at minimum, to all accredited investors
2 as that term is defined under applicable federal securities law, or any
3 successor provision. Each qualified bidder shall, as a condition of
4 participation, certify in writing to the independent auction administra-
5 tor that: the bidder is submitting its bid based solely on its own
6 assessment of the risk-adjusted financial return of the auction equity
7 interest, and not for the purpose of, or with the effect of, artificial-
8 ly suppressing or inflating the auction-clearing return; and the bidder
9 is not acting in concert with any other bidder or with the covered util-
10 ity or any of its affiliates with respect to the formulation of its bid.
11 Any bidder that is itself an investor-owned electric, gas, or water
12 utility subject to cost-of-service regulation by any state or federal
13 regulatory authority, or a holding company that directly or indirectly
14 controls such a utility, shall be ineligible to participate as a bidder,
15 except that the covered utility, its parent company, and any affiliates
16 may participate as bidders, subject to any existing code of conduct
17 policies for affiliate transactions and any further eligibility require-
18 ments established by the commission to prohibit inappropriate preferen-
19 tial treatment in the bidding process. This exclusion shall not apply to
20 any registered investment company, investment adviser, or other institu-
21 tional investor whose ownership of any such utility is solely as a
22 passive investor in diversified portfolios. Holdings by such institu-
23 tional investors in auction equity interests issued pursuant to this
24 section shall not be counted toward any investment limitation applicable
25 to ownership of the covered utility or its common equity under applica-
26 ble state law. The commission shall promulgate rules to implement the
27 exclusion and certification requirements of this subdivision, including
28 procedures for investigation and disqualification of bidders who submit
29 false certifications or who are found to have violated the prohibition
30 on coordinated bidding.

31 10. Where the commission or a court of competent jurisdiction has made
32 a formal finding that a covered utility has engaged in unlawful or
33 imprudent conduct that has materially increased the covered utility's
34 cost of equity for a regulated service, the commission may, in its
35 discretion, exclude the portion of any increase in the authorized return
36 on equity for such regulated service that is attributable to such
37 conduct from the return applicable to the covered utility's common equi-
38 ty. No auction equity interest, whether issued before or after such
39 finding, shall be subject to this exclusion; all auction equity inter-
40 ests shall continue to bear the auction-clearing return established in
41 the auction in which they were issued without reduction on account of
42 any exclusion under this subdivision, it being the intent of this subdi-
43 vision that only the covered utility's common equity shall bear the
44 financial consequences of such exclusion. Nothing in this subdivision
45 shall limit the authority of the commission to impose penalties, disal-
46 lowances, or other remedies available under applicable law.

47 11. (a) A covered utility may, at any time before or after conducting
48 a competitive equity auction, form a regulated service corporation and a
49 regulated service LLC for a regulated service. The regulated service
50 corporation shall be a wholly-owned subsidiary of the covered utility,
51 organized as a corporation under the laws of any state, and treated as a
52 corporation for federal income tax purposes. The regulated service LLC
53 shall be a wholly-owned subsidiary of the regulated service corporation,
54 organized as a limited liability company, and treated as a disregarded
55 entity for federal income tax purposes. The regulated service LLC shall
56 hold all material assets, rights, franchises, and obligations associated

1 with the regulated service. The regulated service corporation shall
2 serve as the issuer of auction equity interests for that regulated
3 service. Formation of a regulated service corporation and regulated
4 service LLC is not a prerequisite to conducting an auction under this
5 section, and the absence of such entities shall not impair the validity
6 of auction equity interests issued by the covered utility.

7 (b) In any competitive equity auction conducted before a regulated
8 service corporation and regulated service LLC have been established, the
9 commission shall require the covered utility to disclose to all quali-
10 fied bidders that auction equity interests are being issued as direct
11 obligations of the covered utility and are subject to the risks of any
12 insolvency, bankruptcy, or restructuring proceedings affecting the
13 covered utility or its affiliates. The commission shall specify the form
14 and content of such disclosure as part of its implementing regulations
15 under subdivision six of this section.

16 (c) Each covered utility shall ensure that all long-term indebtedness
17 with a stated maturity greater than one year issued or incurred on or
18 after the effective date of this section, whether in the form of bonds,
19 notes, debentures, or otherwise, includes a covenant expressly permit-
20 ting the covered utility to transfer the assets, franchises, rights, and
21 obligations associated with each regulated service to a regulated
22 service corporation or regulated service LLC without such transfer
23 constituting a default, event of default, or breach under such indebt-
24 edness. The commission shall not approve any long-term debt financing by
25 a covered utility that does not include such a covenant. For the avoid-
26 ance of doubt, nothing in this subdivision requires a covered utility to
27 restructure, refinance, or assign any indebtedness outstanding as of the
28 effective date of this section in advance of the formation of a regu-
29 lated service LLC pursuant to this subdivision; the allocation and
30 assumption of existing indebtedness upon formation of a regulated
31 service LLC shall be governed by subparagraph (ii) of paragraph (f) of
32 this subdivision.

33 (d) Each covered utility that has not yet established a regulated
34 service corporation and regulated service LLC shall use commercially
35 reasonable efforts to do so no later than five years after the effective
36 date of this section, or five years after the date of the covered utili-
37 ty's first competitive equity auction, whichever is later. The commis-
38 sion may extend this period upon a showing by the covered utility of
39 good cause, which may include the inability to obtain required bondhold-
40 er or creditor consents despite commercially reasonable efforts.

41 (e) Where a covered utility has established a regulated service corpo-
42 ration and regulated service LLC, each such entity shall be structured
43 and operated as a bankruptcy-remote special-purpose entity, in compli-
44 ance with standards to be established by the commission by regulation,
45 which shall include at minimum: (i) maintenance of books of account,
46 bank accounts, and financial records separate from those of the covered
47 utility and any affiliate; (ii) prohibition on commingling of assets;
48 (iii) a requirement that the organizational documents of the regulated
49 service LLC include at least one independent manager whose affirmative
50 consent is required for any voluntary bankruptcy filing by the regulated
51 service LLC or the regulated service corporation; (iv) a covenant by the
52 covered utility not to cause or encourage any involuntary bankruptcy
53 filing against the regulated service corporation or the regulated
54 service LLC; and (v) restrictions on indebtedness of the regulated
55 service corporation and the regulated service LLC except as approved by
56 the commission. The regulated service corporation shall conduct no

1 activities other than holding a membership interest in the regulated
2 service LLC and serving as the issuer of auction equity interests, and
3 shall hold no assets other than its membership interest in the regulated
4 service LLC and any cash or other assets incidental thereto. Formation
5 of both the regulated service corporation and the regulated service LLC
6 shall require such approvals as may be required under applicable law,
7 including approval of any transfer of utility assets or franchises.
8 Where assets are associated with more than one regulated service, such
9 assets may be held by the regulated service LLC as co-owner with one or
10 more other regulated service LLCs, with each LLC's interest propor-
11 tionally allocated in a manner approved by the commission for ratemaking
12 purposes.

13 (f) Capital structure and indebtedness of the regulated service LLC:

14 (i) Each regulated service LLC shall maintain a capital structure for
15 the regulated service consistent with the capital structure authorized
16 by the commission for ratemaking purposes, including both debt and equi-
17 ty components. The equity component of the regulated service to which
18 the authorized return on equity applies shall consist of the regulated
19 service corporation's equity interest in the regulated service LLC, as
20 funded by the proceeds of auction equity interests and the covered util-
21 ity's retained interest. Interest on indebtedness of the regulated
22 service LLC shall be treated as a cost of the regulated service for
23 ratemaking purposes;

24 (ii) Upon formation of a regulated service LLC, the commission shall
25 determine the portion of the covered utility's outstanding indebtedness
26 that is allocable to the regulated service, applying the methodology it
27 uses or would use to allocate the covered utility's capital structure
28 among regulated services for ratemaking purposes. The regulated service
29 LLC shall assume such allocated indebtedness as primary obligor, and the
30 covered utility shall provide an unconditional and irrevocable guaranty
31 of all assumed indebtedness for the remaining term of each such obli-
32 gation. Such assumption shall not constitute a default, acceleration
33 event, assignment, or breach under any such indebtedness, notwithstand-
34 ing any provision of the applicable instrument to the contrary;

35 (iii) Following formation, the regulated service LLC shall issue its
36 own debt to finance the debt component of its capital structure. Such
37 debt shall be secured by the regulated service assets held by the regu-
38 lated service LLC and shall not require a guaranty by the covered util-
39 ity unless the commission determines, upon a showing by the covered util-
40 ity, that a guaranty is necessary to obtain financing on terms
41 consistent with the public interest. Any such guaranty shall be limited
42 in scope and duration to the minimum the commission determines to be
43 necessary;

44 (iv) For any period during which the covered utility guarantees
45 indebtedness of a regulated service LLC, the covered utility shall be
46 entitled to a guaranty fee, recoverable in rates as a cost of the regu-
47 lated service. The guaranty fee shall be set by reference to the cost of
48 obtaining a comparable unconditional irrevocable financial guaranty from
49 an unaffiliated financial institution, as determined by one or more bona
50 fide quotes solicited by the commission or its assign. The commission
51 shall set the guaranty fee at or below the lowest such quote. The guar-
52 anty fee shall terminate with respect to each obligation upon the earli-
53 er of: the maturity or refinancing of such obligation without a covered
54 utility guaranty; or the release of the covered utility's guaranty with
55 respect to such obligation; and

1 (v) The rate base of the regulated service LLC shall be determined in
2 accordance with subdivision nine of section twenty-eight-b of this arti-
3 cle relating to rate base. For the avoidance of doubt, the principles of
4 subdivision nine of section twenty-eight-b of this article apply equally
5 to a regulated service whose assets are held by a regulated service LLC
6 and to a regulated service whose assets are held directly by the covered
7 utility.

8 (g) Upon establishment of a regulated service corporation and regu-
9 lated service LLC, the regulated service corporation shall become the
10 issuer of all subsequent auction equity interests for the applicable
11 regulated service. The commission may, on such terms as it determines to
12 be in the public interest, authorize the covered utility to offer hold-
13 ers of outstanding auction equity interests the option to convert their
14 interests to equivalent interests issued by the regulated service corpo-
15 ration.

16 (h) Notwithstanding the foregoing provisions of this subdivision, a
17 covered utility that: provides only one regulated service subject to the
18 jurisdiction of the commission, or whose multiple categories of service
19 have been determined by the commission to warrant consolidated treatment
20 as a single regulated service pursuant to subdivision four of section
21 twenty-eight-a of this article; and does not engage in any material
22 business activity other than the provision of that regulated service
23 shall not be required to form a regulated service corporation or regu-
24 lated service LLC. Such a covered utility may issue auction equity
25 interests directly, and all references in this article to a regulated
26 service corporation or regulated service LLC shall, as applied to such a
27 covered utility, be construed as references to the covered utility
28 itself.

29 § 28-d. Reporting and transparency. 1. Not later than January
30 fifteenth of each year, the commission shall submit to the governor and
31 the legislature a report on the implementation of this article. Such
32 report shall include, but need not be limited to, the following:

33 (a) each covered utility's requested return on equity, rate of return,
34 and capitalization mix proposed as part of its most recent rate amend-
35 ment application, together with the corresponding data for the preceding
36 three rate amendment applications;

37 (b) the actual return on equity, rate of return, and capitalization
38 mix authorized by the commission for each covered utility in the most
39 recent three rate amendment proceedings;

40 (c) the results of any competitive equity auctions conducted pursuant
41 to section twenty-eight-c of this article for the previous five calendar
42 years;

43 (d) an analysis of the impact on average customer rates, broken down
44 by customer class, resulting from implementation of this article;

45 (e) a description, in clear and accessible language, of how authorized
46 returns on equity have changed, reflect new circumstances, or remained
47 the same during the previous year;

48 (f) all data used for calculations under this article that is not
49 publicly available, together with an explanation of why it was necessary
50 to use such non-public data; and

51 (g) a summary of any enforcement actions taken.

52 2. The annual report shall be published online on the commission's
53 website and made publicly available.

54 § 4. Applicability to State-Jurisdictional Rate Base. This act shall
55 apply only to the portion of a covered utility's rate base that is
56 subject to the ratemaking jurisdiction of the public service commission.

1 Nothing in this act shall be construed to apply to, modify, or otherwise
2 affect the return on equity applicable to any facilities, assets, or
3 services for which the rate of return is determined by the Federal Ener-
4 gy Regulatory Commission or any other federal regulatory authority. To
5 the extent that a covered utility's rate base includes both state-juris-
6 dictional and federally jurisdictional components, the public service
7 commission shall establish procedures to allocate the rate base between
8 those components. The authorized return on equity determined under this
9 act shall be applied solely to the state-jurisdictional component.

10 § 5. Severability. If any clause, sentence, paragraph, subdivision,
11 section or part of this act shall be adjudged by any court of competent
12 jurisdiction to be invalid, such judgment shall not affect, impair, or
13 invalidate the remainder thereof, but shall be confined in its operation
14 to the clause, sentence, paragraph, subdivision, section or part thereof
15 directly involved in the controversy in which such judgment shall have
16 been rendered. It is hereby declared to be the intent of the legislature
17 that this act would have been enacted even if such invalid provisions
18 had not been included herein.

19 § 6. This act shall take effect on the one hundred twentieth day after
20 it shall have become a law and shall apply to any rate proceeding initi-
21 ated on or after such effective date.