

1597

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GIANARIS, NOLAN, MARKEY, ROSENTHAL, PHEFFER, BENEDETTO, FIELDS, ROBINSON, MAISEL, DIAZ, JAFFEE, COOK -- Multi-Sponsored by -- M. of A. BOYLAND, CYMBROWITZ, DESTITO, DINOWITZ, GALEF, GOTTFRIED, McENENY, PERRY, REILLY, SAYWARD, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to requiring the franchise certificate of every steam, gas or electric corporation to be reviewed by the public service commission once every ten years

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 68 of the public service law, as amended by chapter
2 52 of the laws of 1940, is amended to read as follows:
3 S 68. Approval of incorporation and franchises; certificate. 1. No gas
4 corporation or electric corporation shall begin construction of a gas
5 plant or electric plant without first having obtained the permission and
6 approval of the commission. No such corporation shall exercise any right
7 or privilege under any franchise hereafter granted, or under any fran-
8 chise heretofore granted but not heretofore actually exercised, or the
9 exercise of which shall have been suspended for more than one year,
10 without first having obtained the permission and approval of the commis-
11 sion. Before such certificate shall be issued a certified copy of the
12 charter of such corporation shall be filed in the office of the commis-
13 sion, together with a verified statement of the president and secretary
14 of the corporation, showing that it has received the required consent of
15 the proper municipal authorities. The commission shall have power to
16 grant the permission and approval herein specified whenever it shall
17 after due hearing determine that such construction or such exercise of
18 the right, privilege or franchise is necessary or convenient for the
19 public service. Except as provided in article fourteen-a of the general
20 municipal law, no municipality shall build, maintain and operate for

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

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1 other than municipal purposes any works or systems for the manufacture
2 and supplying of gas or electricity for lighting purposes without a
3 certificate of authority granted by the commission. If the certificate
4 of authority is refused, no further proceedings shall be taken by such
5 municipality before the commission, but a new application may be made
6 therefor after one year from the date of such refusal.

7 2. EVERY CERTIFICATE ISSUED UNDER SUBDIVISION ONE OF THIS SECTION
8 SHALL BE REVIEWED IN A TEN-YEAR CYCLE ACCORDING TO A SCHEDULE ESTAB-
9 LISHED BY THE COMMISSION. SUCH SCHEDULE SHALL REQUIRE REVIEWS ACCORDING
10 TO THE FOLLOWING SEQUENCE: FIRST, GAS CORPORATIONS AND ELECTRIC CORPO-
11 RATIONS ENGAGED IN TRANSMISSION AND DISTRIBUTION OF GAS AND/OR ELECTRIC-
12 ITY IN ONE OR MORE MUNICIPALITIES IN THE FIRST JUDICIAL DEPARTMENT;
13 SECOND, GAS CORPORATIONS AND ELECTRIC CORPORATIONS ENGAGED IN TRANS-
14 MISSION OR DISTRIBUTION OF GAS AND/OR ELECTRICITY IN ONE OR MORE MUNICI-
15 PALITIES IN THE SECOND JUDICIAL DEPARTMENT NOT PREVIOUSLY REVIEWED
16 DURING THE CURRENT CYCLE; THIRD, GAS CORPORATIONS AND ELECTRIC CORPO-
17 RATIONS ENGAGED IN DISTRIBUTION OF GAS AND/OR ELECTRICITY IN ONE OR MORE
18 MUNICIPALITIES IN THE THIRD JUDICIAL DEPARTMENT NOT PREVIOUSLY REVIEWED
19 DURING THE CURRENT CYCLE; AND FOURTH, GAS CORPORATIONS AND ELECTRIC
20 CORPORATIONS ENGAGED IN DISTRIBUTION OF GAS AND/OR ELECTRICITY IN ONE OR
21 MORE MUNICIPALITIES IN THE FOURTH JUDICIAL DEPARTMENT NOT PREVIOUSLY
22 REVIEWED DURING THE CURRENT CYCLE. NOTWITHSTANDING THE FOREGOING,
23 NEITHER CERTIFICATES OF AUTHORITY ISSUED TO A MUNICIPALITY PURSUANT TO
24 SUBDIVISION ONE OF THIS SECTION NOR TRANSMISSION OR DISTRIBUTION FACILI-
25 TIES OPERATED PURSUANT TO TITLE ONE-A OF ARTICLE FIVE OF THE PUBLIC
26 AUTHORITIES LAW SHALL BE SUBJECT TO REVIEWS UNDER THIS SECTION.

27 3. EACH SUCH REVIEW SHALL CONSIDER THE RECORD OVER THE PREVIOUS TEN
28 YEARS OF THE GAS OR ELECTRIC CORPORATION IN MEETING ITS OBLIGATIONS
29 UNDER SECTION SIXTY-FIVE OF THIS ARTICLE TO FURNISH AND PROVIDE SUCH
30 SERVICE, INSTRUMENTALITIES AND FACILITIES AS SHALL BE SAFE AND ADEQUATE
31 AND IN ALL RESPECTS JUST AND REASONABLE, AND WHETHER, UPON CONSIDERATION
32 OF SUCH RECORD, THE GAS OR ELECTRIC CORPORATION SHOULD HAVE ITS CERTIF-
33 ICATE RENEWED FOR AN ADDITIONAL TEN-YEAR PERIOD. THE COMMISSION MAY
34 APPROVE SUCH RENEWAL UNCONDITIONALLY, OR MAY PRESCRIBE SUCH CONDITIONS
35 AS THE COMMISSION DEEMS NECESSARY AND APPROPRIATE TO ENSURE THAT THE
36 PUBLIC INTEREST IS SERVED. IN FURTHERANCE OF SUCH REVIEW, THE COMMISSION
37 SHALL DIRECT THE STAFF OF THE DEPARTMENT TO PREPARE A REPORT PROVIDING
38 DETAILED INFORMATION COVERING THE PREVIOUS TEN-YEAR PERIOD ON THE
39 FOLLOWING:

40 (A) THE CONDITION OF THE CORPORATION'S TRANSMISSION AND DISTRIBUTION
41 SYSTEM;

42 (B) THE ADEQUACY OF CAPITAL AND MAINTENANCE EXPENDITURES MADE BY THE
43 GAS OR ELECTRIC CORPORATION;

44 (C) THE NUMBER, EXTENT AND DURATION OF SERVICE INTERRUPTIONS;

45 (D) THE NUMBER AND NATURE OF DEATHS AND INJURIES ATTRIBUTABLE TO
46 NEGLIGENT OR UNSAFE OPERATION OF THE SYSTEM;

47 (E) THE EXTENT AND DEGREE TO WHICH THE CORPORATION FAILED TO MEET ANY
48 SERVICE QUALITY STANDARDS; AND

49 (F) SUCH OTHER MATTERS AS THE COMMISSION MAY PRESCRIBE.

50 4. AT THE TIME OF SUCH REVIEW, THE COMMISSION SHALL CONSIDER ANY
51 APPLICATIONS BY QUALIFIED ENTITIES TO ASSUME MANAGEMENT RESPONSIBILITIES
52 FOR THE OPERATION OF THE TRANSMISSION AND DISTRIBUTION SYSTEM, OR FOR
53 ONE OR MORE COMPONENTS OF SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO
54 TRANSMISSION AND DISTRIBUTION FACILITIES PROVIDING SERVICE TO ONE OR
55 MORE ZONES OR AREAS WITHIN THE OVERALL SERVICE TERRITORY OF THE GAS OR
56 ELECTRIC CORPORATION. THE COMMISSIONER SHALL REVIEW SUCH APPLICATIONS

1 AND DETERMINE WHETHER TRANSFER OF MANAGEMENT RESPONSIBILITIES FOR THE
2 SYSTEM OR PART OF THE SYSTEM TO A QUALIFIED ENTITY WOULD BE IN THE
3 PUBLIC INTEREST; PROVIDED, HOWEVER, THAT IN REVIEWING APPLICATIONS FOR
4 TRANSFER OF MANAGEMENT RESPONSIBILITY FOR PARTS OF SYSTEMS, THE COMMIS-
5 SION SHALL CONSIDER THE IMPACT ON CUSTOMERS SERVED BY OTHER PARTS OF THE
6 SYSTEM, INCLUDING BUT NOT LIMITED TO THE IMPACT ON RURAL AREAS AND LOW-
7 INCOME COMMUNITIES, AS WELL AS ON THOSE SERVED BY THE PARTS PROPOSED FOR
8 TRANSFER. UPON DETERMINING THAT THE PUBLIC INTEREST WOULD BE SERVED
9 THEREBY, THE COMMISSION SHALL ISSUE A CERTIFICATE OF AUTHORITY TO THE
10 QUALIFIED ENTITY FOR THE OPERATION OF THE TRANSMISSION AND DISTRIBUTION
11 SYSTEM, OR COMPONENT OR COMPONENTS OF SUCH SYSTEM, PURSUANT TO THE
12 PROVISIONS OF SUBDIVISION ONE OF THIS SECTION AND SUCH ADDITIONAL CONDI-
13 TIONS AS THE COMMISSION SHALL PRESCRIBE. A CERTIFICATE OF AUTHORITY
14 ISSUED TO A QUALIFIED ENTITY SHALL BE SUBJECT TO THE REVIEW REQUIREMENTS
15 OF THIS SECTION.

16 5. THE COMMISSION SHALL MAKE THE REPORT PREPARED PURSUANT TO SUBDIVI-
17 SION THREE OF THIS SECTION AND APPLICATIONS OF QUALIFIED ENTITIES PURSU-
18 ANT TO SUBDIVISION FOUR OF THIS SECTION AVAILABLE FOR PUBLIC REVIEW AND
19 INSPECTION IN WRITTEN AND ELECTRONIC FORMATS, AND SHALL PROVIDE OPPORTU-
20 NITIES FOR PUBLIC COMMENT ON THE RENEWAL OF A CERTIFICATE AND ON ANY
21 SUCH APPLICATIONS IN A MANNER CONSISTENT WITH THE REQUIREMENTS FOR A
22 MAJOR CHANGE IN SECTION SIXTY-SIX OF THIS ARTICLE.

23 6. THE COMMISSION SHALL PROMULGATE REGULATIONS SETTING FORTH THE
24 REQUIREMENTS FOR THE REVIEW PROCESS, INCLUDING BUT NOT LIMITED TO THE
25 SCHEDULE FOR REVIEW, THE INFORMATION TO BE PRESENTED IN THE REPORT
26 REQUIRED BY SUBDIVISION THREE OF THIS SECTION, THE QUALIFICATIONS NEEDED
27 TO SUBMIT AN APPLICATION PURSUANT TO SUBDIVISION FOUR OF THIS SECTION,
28 AND THE PROCESS FOR TRANSFERS OF MANAGEMENT RESPONSIBILITIES.

29 S 2. Section 81 of the public service law, as amended by chapter 134
30 of the laws of 1921, is amended to read as follows:

31 S 81. Approval of incorporation and franchises; certificate. No steam
32 corporation shall begin construction of a steam plant without first
33 having obtained the permission and approval of the commission. No such
34 corporation shall exercise any right or privilege under any franchise
35 hereafter granted, or under any franchise heretofore granted but not
36 heretofore actually exercised, or the exercise of which shall have been
37 suspended for more than one year, without first having obtained the
38 permission and approval of the commission. Before such certificate shall
39 be issued a certified copy of the charter of such corporation shall be
40 filed in the office of the commission, together with a verified state-
41 ment of the president and secretary of the corporation, showing that it
42 has received the required consent of the proper municipal authorities.
43 The commission shall have power to grant the permission and approval
44 herein specified whenever it shall after due hearing determine that such
45 construction or such exercise of the right, privilege or franchise is
46 necessary or convenient for the public service.

47 EVERY CERTIFICATE PURSUANT TO THIS SECTION SHALL BE REVIEWED EVERY TEN
48 YEARS. THE COMMISSION SHALL PROMULGATE REGULATIONS GOVERNING THE REVIEW
49 PROCESS THAT SHALL BE SUBSTANTIALLY SIMILAR TO THOSE PROMULGATED PURSU-
50 ANT TO SUBDIVISION SIX OF SECTION SIXTY-EIGHT OF THIS CHAPTER.

51 No municipality shall build, maintain and operate for other than
52 municipal purposes any works or systems for the manufacture and supply-
53 ing of steam for purposes without a certificate of authority granted by
54 the commission. If the certificate of authority is refused, no further
55 proceedings shall be taken by such municipality before the commission,

1 but a new application may be made therefor after one year from the date
2 of such refusal.
3 S 3. This act shall take effect immediately. The public service
4 commission shall promulgate regulations necessary to implement the
5 provisions of this act not later than one year after its effective date,
6 and shall provide for the review of steam corporations, gas corporations
7 and electric corporations engaged in the transmission and distribution
8 of steam, gas and/or electricity in one or more municipalities in the
9 first judicial department to commence not later than one year after the
10 effective date of such initial regulations.