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I N A S S E M B L Y

(PREFILED)

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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:

Section 1. Section 68 of the public service law, as amended by chapter 52 of the laws of 1940, is amended to read as follows:

S 68. Approval of incorporation and franchises; certificate. 1. No gas corporation or electric corporation shall begin construction of a gas plant or electric plant without first having obtained the permission and approval of the commission. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities. The commission shall have power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. Except as provided in article fourteen-a of the general 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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other than municipal purposes any works or systems for the manufacture and supplying of gas or electricity for lighting purposes without a certificate of authority granted by the commission. If the certificate of authority is refused, no further proceedings shall be taken by such municipality before the commission, but a new application may be made therefor after one year from the date of such refusal.

2. EVERY CERTIFICATE ISSUED UNDER SUBDIVISION ONE OF THIS SECTION SHALL BE REVIEWED IN A TEN-YEAR CYCLE ACCORDING TO A SCHEDULE ESTABLISHED BY THE COMMISSION. SUCH SCHEDULE SHALL REQUIRE REVIEWS ACCORDING TO THE FOLLOWING SEQUENCE: FIRST, GAS CORPORATIONS AND ELECTRIC CORPORATIONS ENGAGED IN TRANSMISSION AND DISTRIBUTION OF GAS AND/OR ELECTRICITY IN ONE OR MORE MUNICIPALITIES IN THE FIRST JUDICIAL DEPARTMENT; SECOND, GAS CORPORATIONS AND ELECTRIC CORPORATIONS ENGAGED IN TRANSMISSION OR DISTRIBUTION OF GAS AND/OR ELECTRICITY IN ONE OR MORE MUNICIPALITIES IN THE SECOND JUDICIAL DEPARTMENT NOT PREVIOUSLY REVIEWED DURING THE CURRENT CYCLE; THIRD, GAS CORPORATIONS AND ELECTRIC CORPORATIONS ENGAGED IN DISTRIBUTION OF GAS AND/OR ELECTRICITY IN ONE OR MORE MUNICIPALITIES IN THE THIRD JUDICIAL DEPARTMENT NOT PREVIOUSLY REVIEWED DURING THE CURRENT CYCLE; AND FOURTH, GAS CORPORATIONS AND ELECTRIC CORPORATIONS ENGAGED IN DISTRIBUTION OF GAS AND/OR ELECTRICITY IN ONE OR MORE MUNICIPALITIES IN THE FOURTH JUDICIAL DEPARTMENT NOT PREVIOUSLY REVIEWED DURING THE CURRENT CYCLE. NOTWITHSTANDING THE FOREGOING, NEITHER CERTIFICATES OF AUTHORITY ISSUED TO A MUNICIPALITY PURSUANT TO SUBDIVISION ONE OF THIS SECTION NOR TRANSMISSION OR DISTRIBUTION FACILITIES OPERATED PURSUANT TO TITLE ONE-A OF ARTICLE FIVE OF THE PUBLIC AUTHORITIES LAW SHALL BE SUBJECT TO REVIEWS UNDER THIS SECTION.

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

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

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

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

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

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

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

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

AND DETERMINE WHETHER TRANSFER OF MANAGEMENT RESPONSIBILITIES FOR THE SYSTEM OR PART OF THE SYSTEM TO A QUALIFIED ENTITY WOULD BE IN THE PUBLIC INTEREST; PROVIDED, HOWEVER, THAT IN REVIEWING APPLICATIONS FOR TRANSFER OF MANAGEMENT RESPONSIBILITY FOR PARTS OF SYSTEMS, THE COMMISSION SHALL CONSIDER THE IMPACT ON CUSTOMERS SERVED BY OTHER PARTS OF THE SYSTEM, INCLUDING BUT NOT LIMITED TO THE IMPACT ON RURAL AREAS AND LOW-INCOME COMMUNITIES, AS WELL AS ON THOSE SERVED BY THE PARTS PROPOSED FOR TRANSFER. UPON DETERMINING THAT THE PUBLIC INTEREST WOULD BE SERVED THEREBY, THE COMMISSION SHALL ISSUE A CERTIFICATE OF AUTHORITY TO THE QUALIFIED ENTITY FOR THE OPERATION OF THE TRANSMISSION AND DISTRIBUTION SYSTEM, OR COMPONENT OR COMPONENTS OF SUCH SYSTEM, PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION AND SUCH ADDITIONAL CONDITIONS AS THE COMMISSION SHALL PRESCRIBE. A CERTIFICATE OF AUTHORITY ISSUED TO A QUALIFIED ENTITY SHALL BE SUBJECT TO THE REVIEW REQUIREMENTS OF THIS SECTION.

5. THE COMMISSION SHALL MAKE THE REPORT PREPARED PURSUANT TO SUBDIVISION THREE OF THIS SECTION AND APPLICATIONS OF QUALIFIED ENTITIES PURSUANT TO SUBDIVISION FOUR OF THIS SECTION AVAILABLE FOR PUBLIC REVIEW AND INSPECTION IN WRITTEN AND ELECTRONIC FORMATS, AND SHALL PROVIDE OPPORTUNITIES FOR PUBLIC COMMENT ON THE RENEWAL OF A CERTIFICATE AND ON ANY SUCH APPLICATIONS IN A MANNER CONSISTENT WITH THE REQUIREMENTS FOR A MAJOR CHANGE IN SECTION SIXTY-SIX OF THIS ARTICLE.

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

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

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

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

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

but a new application may be made therefor after one year from the date of such refusal.

S 3. This act shall take effect immediately. The public service commission shall promulgate regulations necessary to implement the provisions of this act not later than one year after its effective date, and shall provide for the review of steam corporations, gas corporations and electric corporations engaged in the transmission and distribution of steam, gas and/or electricity in one or more municipalities in the first judicial department to commence not later than one year after the effective date of such initial regulations.