

8722--A

2009-2010 Regular Sessions

I N A S S E M B L Y

June 4, 2009

Introduced by M. of A. CAHILL, GIANARIS, JOHN, DESTITO, DelMONTE, ROSEN-
THAL, HEVESI, GORDON, SWEENEY, BRENNAN, HYER-SPENCER -- Multi-Spon-
sored by -- M. of A. FARRELL, GLICK, GOTTFRIED, SCHIMEL -- read once
and referred to the Committee on Energy -- recommitted to the Commit-
tee on Energy in accordance with Assembly Rule 3, sec. 2 -- committee
discharged, bill amended, ordered reprinted as amended and recommitted
to said committee

AN ACT to amend the public service law, in relation to utility interve-
nor reimbursement

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

1 Section 1. The public service law is amended by adding a new section
2 24-c to read as follows:
3 S 24-C. UTILITY INTERVENOR REIMBURSEMENT. 1. AS USED IN THIS
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5 (A) "COMPENSATION" MEANS PAYMENT FOR ALL OR PART, AS DETERMINED BY THE
6 COMMISSION, OF REASONABLE ADVOCATE'S FEES, REASONABLE EXPERT WITNESS
7 FEES, AND OTHER REASONABLE COSTS FOR PREPARATION AND PARTICIPATION IN A
8 PROCEEDING.
9 (B) "PARTICIPANT" MEANS A GROUP OF INDIVIDUALS THAT APPLY JOINTLY FOR
10 AN AWARD OF COMPENSATION UNDER THIS SECTION AND WHO REPRESENT THE INTER-
11 ESTS OF A SIGNIFICANT NUMBER OF CUSTOMERS, OR A NOT-FOR-PROFIT ORGANIZA-
12 TION IN THIS STATE AUTHORIZED PURSUANT TO ITS ARTICLES OF INCORPORATION
13 OR BYLAWS TO REPRESENT THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS.
14 FOR PURPOSES OF THIS SECTION, A PARTICIPANT DOES NOT INCLUDE A NON-PRO-
15 FIT ORGANIZATION OR OTHER ORGANIZATION WHOSE PRINCIPAL INTERESTS ARE THE
16 WELFARE OF A PUBLIC UTILITY OR ITS INVESTORS OR EMPLOYEES, OR THE
17 WELFARE OF ONE OR MORE BUSINESSES OR INDUSTRIES WHICH RECEIVE UTILITY
18 SERVICE ORDINARILY AND PRIMARILY FOR USE IN CONNECTION WITH THE PROFIT-
19 SEEKING MANUFACTURE, SALE, OR DISTRIBUTION OF GOODS OR SERVICES.
20 (C) "COMMISSION" MEANS THE NEW YORK STATE PUBLIC SERVICE COMMISSION.

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

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(D) "OTHER REASONABLE COSTS" MEANS REASONABLE OUT-OF-POCKET EXPENSES DIRECTLY INCURRED BY A PARTICIPANT THAT ARE DIRECTLY RELATED TO THE CONTENTIONS OR RECOMMENDATIONS MADE BY THE PARTICIPANT THAT RESULTED IN A SUBSTANTIAL CONTRIBUTION.

(E) "PARTY" MEANS ANY INTERESTED PARTY, RESPONDENT PUBLIC UTILITY, OR COMMISSION STAFF IN A HEARING OR PROCEEDING.

(F) "PROCEEDING" MEANS A COMPLAINT, OR INVESTIGATION, RULEMAKING, OR OTHER FORMAL PROCEEDING BEFORE THE COMMISSION, OR ALTERNATIVE DISPUTE RESOLUTION PROCEDURES IN LIEU OF FORMAL PROCEEDINGS AS MAY BE SPONSORED OR ENDORSED BY THE COMMISSION.

(G) "SIGNIFICANT FINANCIAL HARDSHIP" MEANS THAT THE PARTICIPANT WILL BE UNABLE TO AFFORD, WITHOUT UNDUE HARDSHIP, TO PAY THE COSTS OF EFFECTIVE PARTICIPATION, INCLUDING ADVOCATE'S FEES, EXPERT WITNESS FEES, AND OTHER REASONABLE COSTS OF PARTICIPATION.

(H) "SMALL BUSINESS" MEANS A BUSINESS WITH A GROSS ANNUAL REVENUE OF TWO HUNDRED FIFTY THOUSAND DOLLARS OR LESS.

(I) "SUBSTANTIAL CONTRIBUTION" MEANS THAT, IN THE JUDGMENT OF THE COMMISSION, THE PARTICIPANT'S APPLICATION MAY SUBSTANTIALLY ASSIST THE COMMISSION IN MAKING ITS DECISION BECAUSE THE DECISION MAY ADOPT IN WHOLE OR IN PART ONE OR MORE FACTUAL CONTENTIONS, LEGAL CONTENTIONS, OR SPECIFIC POLICY OR PROCEDURAL RECOMMENDATIONS THAT WILL BE PRESENTED BY THE PARTICIPANT.

2. A PARTICIPANT MAY APPLY FOR AN AWARD OF COMPENSATION UNDER THIS SECTION IN A PROCEEDING THAT SUCH PARTICIPANT HAS SOUGHT ACTIVE PARTY STATUS AS DEFINED BY THE COMMISSION. THE COMMISSION SHALL DETERMINE APPROPRIATE PROCEDURES FOR ACCEPTING AND RESPONDING TO SUCH APPLICATIONS. AT THE TIME OF APPLICATION, SUCH PARTICIPANT SHALL SERVE ON EVERY PARTY TO THE PROCEEDING NOTICE OF INTENT TO APPLY FOR AN AWARD OF COMPENSATION.

AN APPLICATION SHALL INCLUDE:

(A) A STATEMENT OF THE NATURE AND EXTENT OF THE PARTICIPANT'S PLANNED PARTICIPATION IN THE PROCEEDING AS FAR AS IT IS POSSIBLE TO SET IT OUT WHEN THE APPLICATION IS FILED.

(B) AT MINIMUM, A DETAILED DESCRIPTION OF ANTICIPATED ADVOCATES AND EXPERT WITNESS FEES AND OTHER COSTS OF PREPARATION AND PARTICIPATION THAT THE PARTICIPANT EXPECTS TO REQUEST AS COMPENSATION.

(C) IF PARTICIPATION OR INTERVENTION WILL IMPOSE A SIGNIFICANT FINANCIAL HARDSHIP AND THE PARTICIPANT SEEKS PAYMENT IN ADVANCE TO AN AWARD OF COMPENSATION IN ORDER TO INITIATE, CONTINUE OR COMPLETE PARTICIPATION IN THE HEARING OR PROCEEDING, SUCH PARTICIPANT MUST INCLUDE EVIDENCE OF SUCH SIGNIFICANT FINANCIAL HARDSHIP IN ITS APPLICATION.

(D) AND OTHER REQUIREMENTS AS REQUIRED BY THE COMMISSION.

3. (A) WITHIN SEVENTY-FIVE DAYS AFTER THE FILING OF AN APPLICATION THE COMMISSION SHALL ISSUE A DECISION THAT DETERMINES WHETHER OR NOT THE PARTICIPANT MAY MAKE A SUBSTANTIAL CONTRIBUTION TO THE FINAL DECISION IN THE HEARING OR PROCEEDING. IF THE COMMISSION FINDS THAT THE PARTICIPANT REQUESTING COMPENSATION MAY MAKE A SUBSTANTIAL CONTRIBUTION, THE COMMISSION SHALL DESCRIBE THIS SUBSTANTIAL CONTRIBUTION AND DETERMINE THE AMOUNT OF COMPENSATION TO BE PAID PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

(B) NOTWITHSTANDING SUBDIVISION FOUR OF THIS SECTION, IF THE COMMISSION FINDS THAT THE PARTICIPANT HAS A SIGNIFICANT FINANCIAL HARDSHIP, THE COMMISSION MAY DIRECT THE PUBLIC UTILITY OR UTILITIES SUBJECT TO THE PROCEEDING TO PAY ALL OR PART OF THE COMPENSATION TO THE COMMISSION TO BE PROVIDED TO THE PARTICIPANT PRIOR TO THE END OF THE PROCEEDING. IN THE EVENT THAT THE PARTICIPANT DISCONTINUES ITS PARTICIPATION IN THE

1 PROCEEDING WITHOUT THE CONSENT OF THE COMMISSION, THE COMMISSION SHALL
2 BE ENTITLED TO, IN WHOLE OR IN PART, RECOVER ANY PAYMENTS MADE TO SUCH
3 PARTICIPANT TO BE REFUNDED TO THE PUBLIC UTILITY OR UTILITIES THAT
4 PROVIDED SUCH PAYMENT.

5 (C) THE COMPUTATION OF COMPENSATION PURSUANT TO PARAGRAPH A OF THIS
6 SUBDIVISION SHALL TAKE INTO CONSIDERATION THE MARKET RATES PAID TO
7 PERSONS OF COMPARABLE TRAINING AND EXPERIENCE WHO OFFER SIMILAR
8 SERVICES. THE COMPENSATION AWARDED MAY NOT, IN ANY CASE, EXCEED THE
9 COMPARABLE MARKET RATE FOR SERVICES PAID BY THE COMMISSION OR THE PUBLIC
10 UTILITY, WHICHEVER IS GREATER, TO PERSONS OF COMPARABLE TRAINING AND
11 EXPERIENCE WHO ARE OFFERING SIMILAR SERVICES.

12 (D) ANY COMPENSATION AWARDED TO A PARTICIPANT AND NOT USED BY SUCH
13 PARTICIPANT SHALL BE RETURNED TO THE COMMISSION FOR REFUND TO THE PUBLIC
14 UTILITY OR UTILITIES THAT PROVIDED SUCH PAYMENT.

15 (E) THE COMMISSION MAY AUDIT THE RECORDS AND BOOKS OF A PARTICIPANT
16 SEEKING PAYMENT PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS
17 SECTION TO THE EXTENT NECESSARY TO VERIFY THE CLAIM OF SIGNIFICANT
18 FINANCIAL HARDSHIP. THE COMMISSION SHALL PRESERVE THE CONFIDENTIALITY OF
19 THE PARTICIPANT'S RECORDS IN MAKING ITS AUDIT.

20 (F) IN THE EVENT THAT THE COMMISSION FINDS THAT TWO OR MORE PARTIC-
21 IPANTS' APPLICATIONS HAVE SUBSTANTIALLY SIMILAR INTERESTS, THE COMMIS-
22 SION MAY REQUIRE SUCH PARTICIPANTS TO APPLY JOINTLY IN ORDER TO RECEIVE
23 COMPENSATION.

24 4. ANY COMPENSATION PURSUANT TO THIS SECTION SHALL BE PAID AT THE
25 CONCLUSION OF THE PROCEEDING BY THE PUBLIC UTILITY OR UTILITIES SUBJECT
26 TO THE PROCEEDING WITHIN THIRTY DAYS. SUCH COMPENSATION SHALL BE REMIT-
27 TED TO THE COMMISSION WHICH SHALL THEN REMIT SUCH COMPENSATION TO THE
28 PARTICIPANT.

29 5. THE COMMISSION SHALL DENY ANY AWARD TO ANY PARTICIPANT WHO ATTEMPTS
30 TO DELAY OR OBSTRUCT THE ORDERLY AND TIMELY FULFILLMENT OF THE COMMIS-
31 SION'S RESPONSIBILITIES.

32 S 2. This act shall take effect on the thirtieth day after it shall
33 have become a law.