

8722--B

2009-2010 Regular Sessions

I N   A S S E M B L Y

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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 -- again reported from said committee with amend-  
ments, 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 PERSONS THAT APPLY JOINTLY FOR AN  
10    AWARD OF COMPENSATION UNDER THIS SECTION AND WHO REPRESENT THE INTERESTS  
11    OF A SIGNIFICANT NUMBER OF RESIDENTIAL OR SMALL BUSINESS CUSTOMERS, OR A  
12    NOT-FOR-PROFIT ORGANIZATION IN THIS STATE AUTHORIZED PURSUANT TO ITS  
13    ARTICLES OF INCORPORATION OR BYLAWS TO REPRESENT THE INTERESTS OF RESI-  
14    DENTIAL OR SMALL BUSINESS UTILITY CUSTOMERS. FOR PURPOSES OF THIS  
15    SECTION, A PARTICIPANT DOES NOT INCLUDE A NON-PROFIT ORGANIZATION OR  
16    OTHER ORGANIZATION WHOSE PRINCIPAL INTERESTS ARE THE WELFARE OF A PUBLIC  
17    UTILITY OR ITS INVESTORS OR EMPLOYEES, OR THE WELFARE OF ONE OR MORE  
18    BUSINESSES OR INDUSTRIES WHICH RECEIVE UTILITY SERVICE ORDINARILY AND

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

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1 PRIMARILY FOR USE IN CONNECTION WITH THE PROFIT-SEEKING MANUFACTURE,  
2 SALE, OR DISTRIBUTION OF GOODS OR SERVICES.

3 (C) "COMMISSION" MEANS THE NEW YORK STATE PUBLIC SERVICE COMMISSION.

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

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

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

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

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

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

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

33 AN APPLICATION SHALL INCLUDE:

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

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

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

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

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

54 (B) NOTWITHSTANDING SUBDIVISION FOUR OF THIS SECTION, IF THE COMMIS-  
55 SION FINDS THAT THE PARTICIPANT HAS A SIGNIFICANT FINANCIAL HARDSHIP,  
56 THE COMMISSION MAY DIRECT THE PUBLIC UTILITY OR UTILITIES SUBJECT TO THE

1 PROCEEDING TO PAY ALL OR PART OF THE COMPENSATION TO THE COMMISSION TO  
2 BE PROVIDED TO THE PARTICIPANT PRIOR TO THE END OF THE PROCEEDING. IN  
3 THE EVENT THAT THE PARTICIPANT DISCONTINUES ITS PARTICIPATION IN THE  
4 PROCEEDING WITHOUT THE CONSENT OF THE COMMISSION, THE COMMISSION SHALL  
5 BE ENTITLED TO, IN WHOLE OR IN PART, RECOVER ANY PAYMENTS MADE TO SUCH  
6 PARTICIPANT TO BE REFUNDED TO THE PUBLIC UTILITY OR UTILITIES THAT  
7 PROVIDED SUCH PAYMENT.

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

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

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

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

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

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

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