

8722--C

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  
-- reported and referred to the Committee on Ways and Means -- commit-  
tee discharged, bill amended, ordered reprinted as amended and recom-  
mitted 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

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

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1 UTILITY OR ITS INVESTORS OR EMPLOYEES, OR THE WELFARE OF ONE OR MORE  
2 BUSINESSES OR INDUSTRIES WHICH RECEIVE UTILITY SERVICE ORDINARILY AND  
3 PRIMARILY FOR USE IN CONNECTION WITH THE PROFIT-SEEKING MANUFACTURE,  
4 SALE, OR DISTRIBUTION OF GOODS OR SERVICES.

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

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

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

12 (F) "PROCEEDING" MEANS A COMPLAINT, OR INVESTIGATION, RULEMAKING, OR  
13 OTHER FORMAL PROCEEDING BEFORE THE COMMISSION, OR ALTERNATIVE DISPUTE  
14 RESOLUTION PROCEDURES IN LIEU OF FORMAL PROCEEDINGS AS MAY BE SPONSORED  
15 OR ENDORSED BY THE COMMISSION, PROVIDED HOWEVER SUCH PROCEEDINGS SHALL  
16 BE LIMITED TO THOSE ARISING UNDER AND PROCEEDING PURSUANT TO THE FOLLOW-  
17 ING ARTICLES OF THIS CHAPTER: (1) THE REGULATION OF THE PRICE OF GAS AND  
18 ELECTRICITY, PURSUANT TO ARTICLE FOUR OF THIS CHAPTER; (2) THE REGU-  
19 LATION OF THE PRICE OF STEAM, PURSUANT TO ARTICLE FOUR-A OF THIS CHAP-  
20 TER; (3) THE REGULATION OF THE PRICE OF TELEGRAPH AND TELEPHONE SERVICE,  
21 PURSUANT TO ARTICLE FIVE OF THIS CHAPTER; (4) THE PRESCRIPTION OF RATES  
22 FOR CABLE TELEVISION SERVICE, PURSUANT TO ARTICLE ELEVEN OF THIS CHAP-  
23 TER; (5) THE SUBMETERING, REMETERING OR RESALE OF ELECTRICITY TO RESI-  
24 DENTIAL PREMISES, PURSUANT TO SECTION SIXTY-FIVE AND SIXTY-SIX OF THIS  
25 CHAPTER, AND PURSUANT TO 16 NYCRR PART 96; AND (6) SUCH SECTIONS OF THIS  
26 CHAPTER AS ARE APPLICABLE TO A PROCEEDING IN WHICH THE COMMISSION MAKES  
27 A FINDING ON THE RECORD THAT THE PUBLIC INTEREST REQUIRES THE REIMBURSE-  
28 MENT OF UTILITY INTERVENOR FEES PURSUANT TO THIS SECTION.

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

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

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

41 (J) "DEPARTMENT" MEANS THE NEW YORK STATE DEPARTMENT OF PUBLIC  
42 SERVICE.

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

50 AN APPLICATION SHALL INCLUDE:

51 (A) A STATEMENT OF THE NATURE AND EXTENT AND THE FACTUAL AND LEGAL  
52 BASIS OF THE PARTICIPANT'S PLANNED PARTICIPATION IN THE PROCEEDING AS  
53 FAR AS IT IS POSSIBLE TO DESCRIBE SUCH PARTICIPATION WITH REASONABLE  
54 SPECIFICITY AT THE TIME THE APPLICATION IS FILED.

1 (B) AT MINIMUM, A REASONABLY DETAILED DESCRIPTION OF ANTICIPATED ADVO-  
2 CATES AND EXPERT WITNESS FEES AND OTHER COSTS OF PREPARATION AND PARTIC-  
3 IPATION THAT THE PARTICIPANT EXPECTS TO REQUEST AS COMPENSATION.

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

9 (D) ANY OTHER REQUIREMENTS AS REQUIRED BY THE DEPARTMENT.

10 3. (A) WITHIN THIRTY DAYS AFTER THE FILING OF AN APPLICATION THE  
11 DEPARTMENT SHALL ISSUE A DECISION THAT DETERMINES WHETHER OR NOT THE  
12 PARTICIPANT MAY MAKE A SUBSTANTIAL CONTRIBUTION TO THE FINAL DECISION IN  
13 THE HEARING OR PROCEEDING. IF THE DEPARTMENT FINDS THAT THE PARTICIPANT  
14 REQUESTING COMPENSATION MAY MAKE A SUBSTANTIAL CONTRIBUTION, THE DEPART-  
15 MENT SHALL DESCRIBE THIS SUBSTANTIAL CONTRIBUTION AND DETERMINE THE  
16 AMOUNT OF COMPENSATION TO BE PAID PURSUANT TO SUBDIVISION FOUR OF THIS  
17 SECTION.

18 (B) NOTWITHSTANDING SUBDIVISION FOUR OF THIS SECTION, IF THE DEPART-  
19 MENT FINDS THAT THE PARTICIPANT HAS A SIGNIFICANT FINANCIAL HARDSHIP,  
20 THE DEPARTMENT MAY DIRECT THE PUBLIC UTILITY OR UTILITIES SUBJECT TO THE  
21 PROCEEDING TO PAY ALL OR PART OF THE COMPENSATION TO THE DEPARTMENT TO  
22 BE PROVIDED TO THE PARTICIPANT PRIOR TO THE END OF THE PROCEEDING. IN  
23 THE EVENT THAT THE PARTICIPANT DISCONTINUES ITS PARTICIPATION IN THE  
24 PROCEEDING WITHOUT THE CONSENT OF THE DEPARTMENT, THE DEPARTMENT SHALL  
25 BE ENTITLED TO, IN WHOLE OR IN PART, RECOVER ANY PAYMENTS MADE TO SUCH  
26 PARTICIPANT TO BE REFUNDED TO THE PUBLIC UTILITY OR UTILITIES THAT  
27 PROVIDED SUCH PAYMENT.

28 (C) THE COMPUTATION OF COMPENSATION PURSUANT TO PARAGRAPH (A) OF THIS  
29 SUBDIVISION SHALL TAKE INTO CONSIDERATION THE MARKET RATES PAID TO  
30 PERSONS OF COMPARABLE TRAINING AND EXPERIENCE WHO OFFER SIMILAR  
31 SERVICES. THE COMPENSATION AWARDED MAY NOT, IN ANY CASE, EXCEED THE  
32 COMPARABLE MARKET RATE FOR SERVICES PAID BY THE DEPARTMENT OR THE PUBLIC  
33 UTILITY, WHICHEVER IS GREATER, TO PERSONS OF COMPARABLE TRAINING AND  
34 EXPERIENCE WHO ARE OFFERING SIMILAR SERVICES.

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

38 (E) THE COMMISSION MAY AUDIT THE RECORDS AND BOOKS OF A PARTICIPANT  
39 SEEKING PAYMENT PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS  
40 SECTION TO THE EXTENT NECESSARY TO VERIFY THE CLAIM OF SIGNIFICANT  
41 FINANCIAL HARDSHIP. THE DEPARTMENT SHALL PRESERVE THE CONFIDENTIALITY OF  
42 THE PARTICIPANT'S RECORDS IN MAKING ITS AUDIT.

43 (F) IN THE EVENT THAT THE DEPARTMENT FINDS THAT TWO OR MORE PARTIC-  
44 IPANTS' APPLICATIONS HAVE SUBSTANTIALLY SIMILAR INTERESTS, THE DEPART-  
45 MENT MAY REQUIRE SUCH PARTICIPANTS TO APPLY JOINTLY IN ORDER TO RECEIVE  
46 COMPENSATION.

47 4. ANY COMPENSATION PURSUANT TO THIS SECTION SHALL BE PAID AT THE  
48 CONCLUSION OF THE PROCEEDING BY THE PUBLIC UTILITY OR UTILITIES SUBJECT  
49 TO THE PROCEEDING WITHIN THIRTY DAYS. SUCH COMPENSATION SHALL BE REMIT-  
50 TED TO THE COMMISSION WHICH SHALL THEN REMIT SUCH COMPENSATION TO THE  
51 PARTICIPANT.

52 5. THE COMMISSION SHALL DENY ANY AWARD TO ANY PARTICIPANT WHO ATTEMPTS  
53 TO DELAY OR OBSTRUCT THE ORDERLY AND TIMELY FULFILLMENT OF THE DEPART-  
54 MENT'S OR COMMISSION'S RESPONSIBILITIES.

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