S T A T E O F N E W Y O R K

5535--A

2009-2010 Regular Sessions

I N S E N A T E

May 14, 2009

Introduced by Sen. FOLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and the state administrative procedure act, in relation to ex parte communications before the public service commission

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

Section 1. The public service law is amended by adding a new section 20-a to read as follows:

S 20-A. EX PARTE COMMUNICATIONS. 1. UNLESS REQUIRED FOR THE DISPOSITION OF EX PARTE MATTERS AUTHORIZED BY LAW, A COMMISSIONER OR ANY EMPLOYEE OF THE DEPARTMENT WHO IS ASSIGNED TO RENDER A DECISION OR TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN AN ADJUDICATORY PROCEEDING BEFORE THE COMMISSION SHALL NOT COMMUNICATE, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH ANY ISSUE OF FACT OR OF LAW, WITH ANY PARTY, OR THE REPRESENTATIVE OF ANY PARTY, EXCEPT UPON NOTICE AND OPPORTUNITY FOR ALL PARTIES TO PARTICIPATE. PROVIDED, HOWEVER, THAT ANY SUCH COMMISSIONER OR EMPLOYEE (A) MAY COMMUNICATE WITH OTHER COMMISSIONERS, AND (B) MAY HAVE THE AID AND ADVICE OF AGENCY STAFF OTHER THAN STAFF WHICH HAS BEEN OR IS ENGAGED IN THE INVESTIGATIVE OR PROSECUTING FUNCTIONS IN CONNECTION WITH THE CASE UNDER CONSIDERATION OR A FACTUALLY RELATED CASE.

2. A PARTY IN AN ADJUDICATORY PROCEEDING BEFORE THE COMMISSION OR THE REPRESENTATIVE OF ANY SUCH PARTY SHALL NOT COMMUNICATE, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH ANY ISSUE OF FACT OR OF LAW WITH A COMMISSIONER OR ANY EMPLOYEE OF THE DEPARTMENT WHO IS ASSIGNED TO RENDER A DECISION OR TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUCH

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

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ADJUDICATORY PROCEEDING EXCEPT UPON NOTICE AND OPPORTUNITY FOR ALL PARTIES TO PARTICIPATE.

3. IF THE COMMISSIONER OR ANY EMPLOYEE OF THE DEPARTMENT SHALL RECEIVE ANY COMMUNICATION, ORAL OR WRITTEN, CONTRARY TO THE PROHIBITIONS IN SUBDIVISIONS ONE AND TWO OF THIS SECTION, HE OR SHE SHALL MAKE A RECORD OF SUCH COMMUNICATION AND FILE SUCH RECORD PROMPTLY WITH THE SECRETARY OF THE COMMISSION. THE SECRETARY OF THE COMMISSION SHALL SERVE COPIES OF SUCH RECORD ON EACH PARTY TO THE ADJUDICATORY PROCEEDING. ANY PARTY MAY PETITION THE COMMISSION FOR SUCH SANCTIONS AGAINST A PARTY THAT HAS MADE SUCH COMMUNICATION CONTRARY TO THE PROHIBITION IN SUBDIVISION TWO OF THIS SECTION AS MAY BE JUST IN THE CIRCUMSTANCES.

4. FOR THE PURPOSES OF THIS SECTION THE TERM "ADJUDICATORY PROCEEDING" SHALL BE DEFINED AS IN SUBDIVISION THREE OF SECTION ONE HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT, EXCEPT THAT THIS SECTION SHALL NOT APPLY TO PROCEEDINGS TO DETERMINE APPLICATIONS FOR INITIAL LICENSES; PROVIDED THAT THIS SECTION SHALL NOT APPLY TO PROCEEDINGS INVOLVING THE VALIDITY OR APPLICATION OF RATES, FACILITIES, OR PRACTICES OF PUBLIC UTILITY COMPANIES.

S 2. Subdivision 2 of section 307 of the state administrative procedure act is amended to read as follows:

2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

This subdivision does not apply [(a) in determining applications for initial licenses for public utilities or carriers; or (b)] to proceedings [involving the validity or application of rates, facilities, or practices of public utilities or carriers] BEFORE THE PUBLIC SERVICE COMMISSION.

S 3. This act shall take effect immediately and shall apply to all proceedings instituted after such effective date; provided, however, that with respect to proceedings in process prior to such effective date, this act shall apply as of the date specified in an order of the public service commission in response to the motion of any party, or ninety days after such effective date, whichever is earlier.