

7687

I N S E N A T E

May 3, 2010

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to utility intervenor reimbursement

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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
19 PRIMARILY FOR USE IN CONNECTION WITH THE PROFIT-SEEKING MANUFACTURE,
20 SALE, OR DISTRIBUTION OF GOODS OR SERVICES.
21 (C) "COMMISSION" MEANS THE NEW YORK STATE PUBLIC SERVICE COMMISSION.
22 (D) "OTHER REASONABLE COSTS" MEANS REASONABLE OUT-OF-POCKET EXPENSES
23 DIRECTLY INCURRED BY A PARTICIPANT THAT ARE DIRECTLY RELATED TO THE
24 CONTENTIONS OR RECOMMENDATIONS MADE BY THE PARTICIPANT THAT RESULTED IN
25 A SUBSTANTIAL CONTRIBUTION.
26 (E) "PARTY" MEANS ANY INTERESTED PARTY, RESPONDENT PUBLIC UTILITY, OR
27 COMMISSION STAFF IN A HEARING OR PROCEEDING.

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

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

(C) THE COMPUTATION OF COMPENSATION PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION SHALL TAKE INTO CONSIDERATION THE MARKET RATES PAID TO

1 PERSONS OF COMPARABLE TRAINING AND EXPERIENCE WHO OFFER SIMILAR
2 SERVICES. THE COMPENSATION AWARDED MAY NOT, IN ANY CASE, EXCEED THE
3 COMPARABLE MARKET RATE FOR SERVICES PAID BY THE COMMISSION OR THE PUBLIC
4 UTILITY, WHICHEVER IS GREATER, TO PERSONS OF COMPARABLE TRAINING AND
5 EXPERIENCE WHO ARE OFFERING SIMILAR SERVICES.

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

9 (E) THE COMMISSION MAY AUDIT THE RECORDS AND BOOKS OF A PARTICIPANT
10 SEEKING PAYMENT PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS
11 SECTION TO THE EXTENT NECESSARY TO VERIFY THE CLAIM OF SIGNIFICANT
12 FINANCIAL HARDSHIP. THE COMMISSION SHALL PRESERVE THE CONFIDENTIALITY OF
13 THE PARTICIPANT'S RECORDS IN MAKING ITS AUDIT.

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

18 4. ANY COMPENSATION PURSUANT TO THIS SECTION SHALL BE PAID AT THE
19 CONCLUSION OF THE PROCEEDING BY THE PUBLIC UTILITY OR UTILITIES SUBJECT
20 TO THE PROCEEDING WITHIN THIRTY DAYS. SUCH COMPENSATION SHALL BE REMIT-
21 TED TO THE COMMISSION WHICH SHALL THEN REMIT SUCH COMPENSATION TO THE
22 PARTICIPANT.

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

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