

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.

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

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

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

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

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

24 AN APPLICATION SHALL INCLUDE:

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

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

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

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

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

45 (B) NOTWITHSTANDING SUBDIVISION FOUR OF THIS SECTION, IF THE COMMIS-  
46 SION FINDS THAT THE PARTICIPANT HAS A SIGNIFICANT FINANCIAL HARDSHIP,  
47 THE COMMISSION MAY DIRECT THE PUBLIC UTILITY OR UTILITIES SUBJECT TO THE  
48 PROCEEDING TO PAY ALL OR PART OF THE COMPENSATION TO THE COMMISSION TO  
49 BE PROVIDED TO THE PARTICIPANT PRIOR TO THE END OF THE PROCEEDING. IN  
50 THE EVENT THAT THE PARTICIPANT DISCONTINUES ITS PARTICIPATION IN THE  
51 PROCEEDING WITHOUT THE CONSENT OF THE COMMISSION, THE COMMISSION SHALL  
52 BE ENTITLED TO, IN WHOLE OR IN PART, RECOVER ANY PAYMENTS MADE TO SUCH  
53 PARTICIPANT TO BE REFUNDED TO THE PUBLIC UTILITY OR UTILITIES THAT  
54 PROVIDED SUCH PAYMENT.

55 (C) THE COMPUTATION OF COMPENSATION PURSUANT TO PARAGRAPH A OF THIS  
56 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 PARTICIPANTS'  
15 APPLICATIONS HAVE SUBSTANTIALLY SIMILAR INTERESTS, THE COMMISSION  
16 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 REMITTED  
21 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 COMMISSION'S  
25 RESPONSIBILITIES.

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