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

1088

2011-2012 Regular Sessions

I N S E N A T E

January 5, 2011

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; and to amend the state finance law in relation to establishing the utility intervenor account

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 24-c to read as follows:

S 24-C. UTILITY INTERVENOR REIMBURSEMENT. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "COMPENSATION" MEANS PAYMENT FROM THE UTILITY INTERVENOR ACCOUNT FUND ESTABLISHED BY SECTION NINETY-SEVEN-KKKK OF THE STATE FINANCE LAW, FOR ALL OR PART, AS DETERMINED BY THE COMMISSION, OF REASONABLE ADVOCATE'S FEES, REASONABLE EXPERT WITNESS FEES, AND OTHER REASONABLE COSTS FOR PREPARATION AND PARTICIPATION IN A PROCEEDING.

(B) "PARTICIPANT" MEANS A GROUP OF PERSONS THAT APPLY JOINTLY FOR AN AWARD OF COMPENSATION UNDER THIS SECTION AND WHO REPRESENT THE INTERESTS OF A SIGNIFICANT NUMBER OF RESIDENTIAL OR SMALL BUSINESS CUSTOMERS, OR A NOT-FOR-PROFIT ORGANIZATION IN THIS STATE AUTHORIZED PURSUANT TO ITS ARTICLES OF INCORPORATION OR BYLAWS TO REPRESENT THE INTERESTS OF RESIDENTIAL OR SMALL BUSINESS UTILITY CUSTOMERS. FOR PURPOSES OF THIS SECTION, A PARTICIPANT DOES NOT INCLUDE A NON-PROFIT ORGANIZATION OR OTHER ORGANIZATION WHOSE PRINCIPAL INTERESTS ARE THE WELFARE OF A PUBLIC UTILITY OR ITS INVESTORS OR EMPLOYEES, OR THE WELFARE OF ONE OR MORE BUSINESSES OR INDUSTRIES WHICH RECEIVE UTILITY SERVICE ORDINARILY AND PRIMARILY FOR USE IN CONNECTION WITH THE PROFIT-SEEKING MANUFACTURE, SALE, OR DISTRIBUTION OF GOODS OR SERVICES.

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

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

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

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

(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, PROVIDED HOWEVER SUCH PROCEEDINGS SHALL BE LIMITED TO THOSE ARISING UNDER AND PROCEEDING PURSUANT TO THE FOLLOWING ARTICLES OF THIS CHAPTER: (1) THE REGULATION OF THE PRICE OF GAS AND ELECTRICITY, PURSUANT TO ARTICLE FOUR OF THIS CHAPTER; (2) THE REGULATION OF THE PRICE OF STEAM, PURSUANT TO ARTICLE FOUR-A OF THIS CHAPTER; (3) THE SUBMETERING, REMETERING OR RESALE OF ELECTRICITY TO RESIDENTIAL PREMISES, PURSUANT TO SECTION SIXTY-FIVE AND SIXTY-SIX OF THIS CHAPTER, AND PURSUANT TO 16 NYCRR PART 96; AND (4) SUCH SECTIONS OF THIS CHAPTER AS ARE APPLICABLE TO A PROCEEDING IN WHICH THE COMMISSION MAKES A FINDING ON THE RECORD THAT THE PUBLIC INTEREST REQUIRES THE REIMBURSEMENT OF UTILITY INTERVENOR FEES PURSUANT TO THIS SECTION.

(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 DEPARTMENT, 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.

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

2. A PARTICIPANT MAY APPLY FOR AN AWARD OF COMPENSATION UNDER THIS SECTION IN A PROCEEDING IN WHICH SUCH PARTICIPANT HAS SOUGHT ACTIVE PARTY STATUS AS DEFINED BY THE DEPARTMENT OR COMMISSION. THE DEPARTMENT OR 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 AND THE FACTUAL AND LEGAL BASIS OF THE PARTICIPANT'S PLANNED PARTICIPATION IN THE PROCEEDING AS FAR AS IT IS POSSIBLE TO DESCRIBE SUCH PARTICIPATION WITH REASONABLE SPECIFICITY AT THE TIME THE APPLICATION IS FILED.

(B) AT MINIMUM, A REASONABLY 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) ANY OTHER REQUIREMENTS AS REQUIRED BY THE DEPARTMENT.

3. (A) WITHIN THIRTY DAYS AFTER THE FILING OF AN APPLICATION THE DEPARTMENT 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 DEPARTMENT FINDS THAT THE PARTICIPANT REQUESTING COMPENSATION MAY MAKE A SUBSTANTIAL CONTRIBUTION, THE DEPARTMENT 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 DEPARTMENT FINDS THAT THE PARTICIPANT HAS A SIGNIFICANT FINANCIAL HARDSHIP, THE DEPARTMENT MAY DIRECT THE PUBLIC UTILITY OR UTILITIES SUBJECT TO THE PROCEEDING TO PAY ALL OR PART OF THE COMPENSATION TO THE DEPARTMENT 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 DEPARTMENT, THE DEPARTMENT 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 PERSONS OF COMPARABLE TRAINING AND EXPERIENCE WHO OFFER SIMILAR SERVICES. THE COMPENSATION AWARDED MAY NOT, IN ANY CASE, EXCEED THE COMPARABLE MARKET RATE FOR SERVICES PAID BY THE DEPARTMENT OR THE PUBLIC UTILITY, WHICHEVER IS GREATER, TO PERSONS OF COMPARABLE TRAINING AND EXPERIENCE WHO ARE OFFERING SIMILAR SERVICES.

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

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

(F) IN THE EVENT THAT THE DEPARTMENT FINDS THAT TWO OR MORE PARTICIPANTS' APPLICATIONS HAVE SUBSTANTIALLY SIMILAR INTERESTS, THE DEPARTMENT MAY REQUIRE SUCH PARTICIPANTS TO APPLY JOINTLY IN ORDER TO RECEIVE COMPENSATION.

4. ANY COMPENSATION PURSUANT TO THIS SECTION SHALL BE PAID AT THE CONCLUSION OF THE PROCEEDING BY THE PUBLIC UTILITY OR UTILITIES SUBJECT TO THE PROCEEDING WITHIN THIRTY DAYS. SUCH COMPENSATION SHALL BE REMITTED TO THE COMMISSION WHICH SHALL THEN REMIT SUCH COMPENSATION TO THE PARTICIPANT.

5. THE COMMISSION SHALL DENY ANY AWARD TO ANY PARTICIPANT WHO ATTEMPTS TO DELAY OR OBSTRUCT THE ORDERLY AND TIMELY FULFILLMENT OF THE DEPARTMENT'S OR COMMISSION'S RESPONSIBILITIES.

S 2. The state finance law is amended by adding a new section 97-kkkk to read as follows:

S 97-KKKK. UTILITY INTERVENOR ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A FUND TO BE KNOWN AS THE UTILITY INTERVENOR ACCOUNT.

2. SUCH ACCOUNT SHALL CONSIST OF ALL UTILITY INTERVENOR REIMBURSEMENT MONIES RECEIVED FROM UTILITIES PURSUANT TO SECTION TWENTY-FOUR-C OF THE PUBLIC SERVICE LAW.

S 3. This act shall take effect on the thirtieth day after it shall have become a law.