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

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2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. BRENNAN, KAVANAGH, ABINANTI, OTIS, BUCHWALD, JACOBS -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public service law, in relation to clarifying the mandatory time within which the public service commission must act upon petitions submitted by regulated entities and the citizenry

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 27 to read as follows:

S 27. PETITIONS; TIME PERIOD FOR ACTION TO BE TAKEN. 1. FOR THE PURPOSES OF THIS SECTION, THE TERM:

(A) "CUSTOMER" SHALL MEAN A CUSTOMER OR CONSUMER OF A UTILITY SERVICE THAT IS REGULATED PURSUANT TO THIS CHAPTER, WHO SHALL BE EITHER AN INDIVIDUAL; A GROUP OF INDIVIDUALS; THE MAYOR OF A CITY; THE TRUSTEES OF A VILLAGE; THE TOWN BOARD OF A TOWN; OR THE CHIEF EXECUTIVE OFFICE OR THE LEGISLATIVE BODY OF A COUNTY. FOR THE PURPOSES OF THIS SUBDIVISION, "CUSTOMER" SHALL INCLUDE THE DIVISION OF CONSUMER PROTECTION OF THE DEPARTMENT OF STATE.

(B) "PETITION" SHALL MEAN ANY PETITION OR COMPLAINT FILED WITH OR SUBMITTED TO THE COMMISSION PURSUANT TO THIS CHAPTER BY A CUSTOMER, ALLEGING OR RELATING TO:

(I) THE FAILURE OR OMITTING TO DO ANYTHING REQUIRED OF A PUBLIC UTILITY COMPANY BY ANY PROVISION OF THIS CHAPTER, OR BY ANY REGULATIONS OR AN ORDER OF THE COMMISSION;

(II) ANY ACTIONS TAKEN BY A PUBLIC UTILITY COMPANY, ITS OFFICERS, EMPLOYEES OR AGENTS THAT ARE CONTRARY TO OR IN VIOLATION OF THE PROVISIONS OF THIS CHAPTER; THE REGULATIONS OR AN ORDER OF THE COMMIS-

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

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SION; OR THE TERMS OR CONDITIONS OF THE FRANCHISE OR CHARTER OF THE PUBLIC UTILITY COMPANY;

(III) RATE CHARGES OR CLASSIFICATION OF SERVICE; OR

(IV) THE ADEQUACY, EFFICIENCY OR RELIABILITY OF SERVICE.

SUCH TERM SHALL NOT MEAN OR INCLUDE ANY PETITION FILED OR SUBMITTED BY A PUBLIC UTILITY CORPORATION OR ANY CORPORATION THAT PROVIDES OR SUPPLIES UTILITY SERVICES PURSUANT TO THIS CHAPTER.

2. (A) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, AND EXCEPT WHERE A SHORTER TIME PERIOD IS REQUIRED PURSUANT TO THIS CHAPTER, THE COMMISSION SHALL COMPLETE ITS INVESTIGATION AND ISSUE A DETERMINATION OR DECISION WITH RESPECT TO ANY PETITION WITHIN NINETY DAYS OF THE FILING OR SUBMISSION OF THE PETITION.

(B) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (A) OF THIS SUBDIVISION, IF THE PETITION ALLEGES AN EMERGENCY OR SOME OTHER ACTION THAT THREATENS OR IMPACTS THE HEALTH OR SAFETY OF ANY PERSON OR THE SURROUNDING AREA, THE COMMISSION SHALL MAKE A DETERMINATION AS SOON AS POSSIBLE BUT IN NO EVENT MORE THAN THIRTY DAYS FROM THE DATE WHEN SUCH PETITION WAS FILED OR SUBMITTED.

(C) IF THE COMMISSION IS UNABLE TO MEET THE TIME LIMITATIONS SET FORTH IN THIS SUBDIVISION, THE COMMISSION SHALL PREPARE AND SEND TO THE PETITIONER OR COMPLAINANT A WRITTEN DOCUMENT STATING THE REASONS FOR THE FAILURE OR INABILITY OF THE COMMISSION TO COMPLY WITH THE TIME FRAMES, AND THE DATE WHEN A DETERMINATION WILL BE MADE, EXCEPT THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO PETITIONS DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION.

(D) NOTWITHSTANDING ANY PROVISION OF THIS SUBDIVISION AND OF THIS CHAPTER TO THE CONTRARY, IF THE PETITIONER OR COMPLAINANT REQUESTS AN OPPORTUNITY TO BE HEARD ON THE PETITION, THE COMMISSION SHALL COMMENCE THE HEARING WITHIN TEN BUSINESS DAYS OF THE REQUEST AND SHALL MAKE ITS DETERMINATION WITHIN THIRTY DAYS OF THE LAST DAY OF THE HEARING. IF THE COMMISSION DIRECTS THAT A HEARING BE CONDUCTED ON THE PETITION, THE DECISION TO CONDUCT SUCH HEARING SHALL BE MADE WITHIN THIRTY DAYS OF THE INITIAL FILING OF THE PETITION, AND THE HEARING SHALL BE COMPLETED AND A DECISION THEREON ISSUED WITHIN NINETY DAYS OF THE INITIAL FILING OF THE PETITION.

3. ON OR BEFORE FEBRUARY FIFTEENTH OF EACH YEAR, THE COMMISSION SHALL SUBMIT A REPORT TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE AND THE CHAIRS OF SENATE AND ASSEMBLY COMMITTEES ON CORPORATIONS, AUTHORITIES AND COMMISSIONS SETTING FORTH:

(A) THE TOTAL NUMBER OF PETITIONS FILED OR SUBMITTED WITH THE COMMISSION IN THE PREVIOUS CALENDAR YEAR;

(B) A BREAKDOWN OF SUCH PETITIONS BY UTILITY AND SUBJECT MATTER OF THE PETITION;

(C) THE NUMBER OF SUCH PETITIONS UPHELD, DISMISSED OR OTHERWISE RESOLVED, BROKEN DOWN BY UTILITY AND SUBJECT MATTER;

(D) THE NUMBER AND PERCENTAGE OF PETITIONS THAT WERE UPHELD, DISMISSED OR RESOLVED WITHIN THE STATUTORY TIME FRAME; AND

(E) IF APPLICABLE, THE NUMBER OF PETITIONS THAT WERE NOT COMPLETED OR RESOLVED WITHIN THE STATUTORY TIME FRAMES, THE REASONS FOR FAILURE TO MEET THE TIME FRAMES, AND THE AVERAGE LENGTH OF TIME FOR SUCH PETITIONS TO BE FINALLY COMPLETED OR RESOLVED.

4. IF THE COMMISSION FAILS TO MEET OR COMPLY WITH THE TIME FRAMES SET FORTH IN THIS SUBDIVISION, THE PETITIONER OR COMPLAINANT MAY COMMENCE A SPECIAL PROCEEDING AGAINST THE COMMISSION PURSUANT TO SUBDIVISION ONE OF SECTION SEVENTY-EIGHT HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES.

A PREVAILING PETITIONER OR COMPLAINANT SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES AND COURT COSTS.

S 2. On or before the one hundred eightieth day after the effective date of this act, the public service commission shall make or render a determination on any petition or complaint that was filed with or submitted to such commission prior to the effective date of this act. As soon as reasonably possible after the end of the 180 day period, the public service commission shall issue a report to the governor, the speaker of the assembly, the temporary president of the senate and the chairs of the senate and assembly standing committees on corporations, authorities and commissions stating the total number of petitions or complaints involved; the number of petitions or complaints dismissed or resolved; and if such commission is unable to meet this time frame, the reasons for the delay or inaction.

S 3. Severability. If any provision of this act or its application to any person or circumstance is held invalid, this invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

S 4. This act shall take effect immediately.