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I N A S S E M B L Y

March 19, 2013

Introduced by M. of A. DINOWITZ, PAULIN, BRENNAN, MILLMAN, CRESPO, JACOBS, KEARNS, MOSLEY, ROSENTHAL, SEPULVEDA, COLTON, PERRY, ZEBROWSKI, COOK, GOTTFRIED, MAYER, OTIS, GALEF, JAFFEE, HENNESSEY, CAHILL, ABINANTI, HEVESI, STECK, STIRPE, McDONALD, GUNTHER, MONTESANO, ROBINSON, MARKEY, SKARTADOS, LUPARDO, RAIA, BRINDISI, WEPRIN -- Multi-Sponsored by -- M. of A. ARROYO, CLARK, ENGLEBRIGHT, GLICK, RIVERA, ROSA, SCHIMEL, THIELE, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the executive law and the public service law, in relation to creating the state office of the utility consumer advocate

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

1 Section 1. Subdivision 2 of section 94-a of the executive law is
2 amended by adding a new paragraph (d) to read as follows:
3 (D) THE SECRETARY, UPON ADVICE OF THE STATE OFFICE OF THE UTILITY
4 CONSUMER ADVOCATE, SHALL PROVIDE TO THE DEPARTMENT OF PUBLIC SERVICE AN
5 ESTIMATE PRIOR TO THE START OF EACH FISCAL YEAR OF THE TOTAL COSTS AND
6 EXPENSES, EXCEPT ANY FUNDS APPROPRIATED FOR THE UTILITY INTERVENTION
7 UNIT, INCLUDING THE COMPENSATION AND EXPENSES OF THE STATE OFFICE OF THE
8 UTILITY CONSUMER ADVOCATE, ITS OFFICERS, AGENTS AND EMPLOYEES, AND
9 INCLUDING THE COST OF RETIREMENT CONTRIBUTIONS, SOCIAL SECURITY, HEALTH
10 AND DENTAL INSURANCE, SURVIVOR'S BENEFITS, WORKERS' COMPENSATION, UNEM-
11 PLOYMENT INSURANCE AND OTHER FRINGE BENEFITS REQUIRED TO BE PAID BY THE
12 STATE FOR THE PERSONNEL OF THE STATE OFFICE OF THE UTILITY CONSUMER
13 ADVOCATE, AND INCLUDING ALL OTHER ITEMS OF MAINTENANCE AND OPERATION
14 EXPENSES, AND ALL OTHER DIRECT AND INDIRECT COSTS.
15 S 2. Paragraph (a) of subdivision 4 of section 94-a of the executive
16 law, as added by section 21 of part A of chapter 62 of the laws of 2011,
17 is amended to read as follows:

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

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1 (a) There is established within the division a state utility inter-
2 vention unit AND THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE TO
3 REPRESENT THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS. THE UTILITY
4 CONSUMER ADVOCATE, WHO SHALL HEAD THE STATE OFFICE OF THE UTILITY
5 CONSUMER ADVOCATE, SHALL BE APPOINTED BY THE GOVERNOR TO A TERM OF SIX
6 YEARS, SUBJECT TO SENATE CONFIRMATION. THE UTILITY CONSUMER ADVOCATE
7 SHALL POSSESS KNOWLEDGE AND EXPERIENCE IN MATTERS AFFECTING RESIDENTIAL
8 UTILITY CUSTOMERS, SHALL BE RESPONSIBLE FOR THE DIRECTION, CONTROL, AND
9 OPERATION OF THE UTILITY INTERVENTION UNIT, INCLUDING ITS HIRING OF
10 STAFF AND RETENTION OF EXPERTS FOR ANALYSIS AND TESTIMONY IN
11 PROCEEDINGS. THE UTILITY CONSUMER ADVOCATE SHALL NOT BE REMOVED EXCEPT
12 FOR CAUSE. EXERCISE OF INDEPENDENT JUDGMENT IN ADVOCATING POSITIONS ON
13 BEHALF OF RESIDENTIAL UTILITY CUSTOMERS SHALL NOT CONSTITUTE CAUSE FOR
14 REMOVAL OF THE UTILITY CONSUMER ADVOCATE.

15 S 3. Subparagraphs (i) and (ii) of paragraph (b) of subdivision 4 of
16 section 94-a of the executive law, as amended by section 12 of part A of
17 chapter 173 of the laws of 2013, are amended to read as follows:

18 (i) [on behalf of the secretary,] initiate, intervene in, or partic-
19 ipate ON BEHALF OF RESIDENTIAL UTILITY CUSTOMERS in any proceedings
20 before the public service commission or the department of public
21 service, INCLUDING, BUT NOT LIMITED to the extent authorized by sections
22 three-b, twenty-four-a, seventy-one, eighty-four or ninety-six of the
23 public service law or any other applicable provision of law, THE FEDERAL
24 ENERGY REGULATORY COMMISSION, THE FEDERAL COMMUNICATIONS COMMISSION,
25 FEDERAL, STATE AND LOCAL ADMINISTRATIVE AND REGULATORY AGENCIES, AND
26 STATE AND FEDERAL COURTS IN ANY MATTER OR PROCEEDING THAT MAY SUBSTAN-
27 Tially AFFECT THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS, INCLUDING,
28 BUT NOT LIMITED TO, A PROPOSED CHANGE OF RATES, CHARGES, TERMS AND
29 CONDITIONS OF SERVICE, THE ADOPTION OF RULES, REGULATIONS, GUIDELINES,
30 ORDERS, STANDARDS OR FINAL POLICY DECISIONS where [he or she] THE UTILI-
31 TY CONSUMER ADVOCATE deems such initiation, intervention or partic-
32 ipation to be necessary or appropriate;

33 (ii) represent the interests of [consumers] RESIDENTIAL UTILITY
34 CUSTOMERS of the state before federal, state and local administrative
35 and regulatory agencies engaged in the regulation of energy [services],
36 TELECOMMUNICATIONS, WATER AND OTHER UTILITY SERVICES, AND BEFORE STATE
37 AND FEDERAL COURTS IN ACTIONS AND PROCEEDINGS TO REVIEW THE ACTIONS OF
38 UTILITIES OR ORDERS OF UTILITY REGULATORY AGENCIES. ANY ACTION OR
39 PROCEEDING BROUGHT BY THE UTILITY CONSUMER ADVOCATE BEFORE A COURT OR AN
40 AGENCY SHALL BE BROUGHT IN THE NAME OF THE STATE OFFICE OF THE UTILITY
41 CONSUMER ADVOCATE. THE UTILITY CONSUMER ADVOCATE MAY JOIN WITH A RESI-
42 DENTIAL UTILITY CUSTOMER OR GROUP OF RESIDENTIAL UTILITY CUSTOMERS IN
43 BRINGING AN ACTION;

44 S 4. Subdivision 4 of section 94-a of the executive law is amended by
45 adding a new paragraph (c) to read as follows:

46 (C) (I) IN ADDITION TO ANY OTHER AUTHORITY CONFERRED UPON THE UTILITY
47 CONSUMER ADVOCATE, HE OR SHE IS AUTHORIZED, AND IT SHALL BE HIS OR HER
48 DUTY TO REPRESENT THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS AS A
49 PARTY, OR OTHERWISE PARTICIPATE FOR THE PURPOSE OF REPRESENTING THE
50 INTERESTS OF SUCH CUSTOMERS BEFORE ANY AGENCIES OR COURTS. HE OR SHE MAY
51 INITIATE PROCEEDINGS IF IN HIS OR HER JUDGMENT DOING SO MAY BE NECESSARY
52 IN CONNECTION WITH ANY MATTER INVOLVING THE ACTIONS OR REGULATION OF
53 PUBLIC UTILITY COMPANIES WHETHER ON APPEAL OR OTHERWISE INITIATED. THE
54 UTILITY CONSUMER ADVOCATE MAY MONITOR ALL CASES BEFORE REGULATORY AGEN-
55 CIES IN THE UNITED STATES, INCLUDING THE FEDERAL COMMUNICATIONS COMMIS-
56 SION AND THE FEDERAL ENERGY REGULATORY COMMISSION THAT AFFECT THE INTER-

1 ESTS OF RESIDENTIAL UTILITY CUSTOMERS OF THE STATE AND MAY FORMALLY
2 PARTICIPATE IN THOSE PROCEEDINGS WHICH IN HIS OR HER JUDGMENT WARRANTS
3 SUCH PARTICIPATION.

4 (II) THE UTILITY CONSUMER ADVOCATE SHALL EXERCISE HIS OR HER INDEPEND-
5 ENT DISCRETION IN DETERMINING THE INTERESTS OF RESIDENTIAL UTILITY
6 CUSTOMERS THAT WILL BE ADVOCATED IN ANY PROCEEDING AND DETERMINE WHETHER
7 TO PARTICIPATE IN OR INITIATE ANY PROCEEDING AND, IN SO DETERMINING,
8 SHALL CONSIDER THE PUBLIC INTEREST, THE RESOURCES AVAILABLE, AND THE
9 SUBSTANTIALITY OF THE EFFECT OF THE PROCEEDING ON THE INTEREST OF RESI-
10 DENTIAL UTILITY CUSTOMERS.

11 S 5. Paragraph (a) of subdivision 2 of section 18-a of the public
12 service law, as amended by section 2 of part A of chapter 173 of the
13 laws of 2013, is amended to read as follows:

14 (a) The chairman of the department shall estimate prior to the start
15 of each state fiscal year the total costs and expenses, including the
16 compensation and expenses of the commission and the department, their
17 officers, agents and employees, and including the cost of retirement
18 contributions, social security, health and dental insurance, survivor's
19 benefits, workers' compensation, unemployment insurance and other fringe
20 benefits required to be paid by the state for the personnel of the
21 commission and the department, and including all other items of mainte-
22 nance and operation expenses, and all other direct and indirect costs.
23 Based on such estimates, the chairman shall determine the amount to be
24 paid by each assessed public utility company and the Long Island power
25 authority and a bill shall be rendered to each such public utility
26 company and authority. BASED ON THE ESTIMATE PROVIDED PURSUANT TO PARA-
27 GRAPH (D) OF SUBDIVISION TWO OF SECTION NINETY-FOUR-A OF THE EXECUTIVE
28 LAW, THE CHAIRMAN SHALL DETERMINE THE AMOUNT TO BE PAID BY EACH ASSESSED
29 PUBLIC UTILITY COMPANY AND THE LONG ISLAND POWER AUTHORITY AND A BILL
30 SHALL BE RENDERED TO EACH SUCH PUBLIC UTILITY COMPANY.

31 S 6. This act shall take effect on April 1, 2015; provided however
32 that if section 12 of part A of chapter 173 of the laws of 2013 shall
33 not have taken effect on or before such date then section three of this
34 act shall take effect on the same date and in the same manner as such
35 chapter of the laws of 2013 takes effect.