

4550--A

2013-2014 Regular Sessions

I N S E N A T E

April 10, 2013

Introduced by Sens. SAVINO, ADDABBO, AVELLA, CARLUCCI, ESPAILLAT, GRISANTI, HANNON, HASSELL-THOMPSON, HOYLMAN, KENNEDY, KLEIN, KRUEGER, LATIMER, MONTGOMERY, PARKER, SAMPSON, SQUADRON, TKACZYK, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:
18 (a) There is established within the division a state utility inter-
19 vention unit AND THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE TO

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

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

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

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

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

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

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

1 PARTICIPATE IN THOSE PROCEEDINGS WHICH IN HIS OR HER JUDGMENT WARRANTS
2 SUCH PARTICIPATION.

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

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

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

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