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

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I N A S S E M B L Y

April 6, 2016

Introduced by M. of A. BRENNAN, SIMOTAS, MOSLEY, RODRIGUEZ, SIMON, BRONSON, ABINANTI, LIFTON, MAYER, KEARNS, HOOPER, ORTIZ, GOTTFRIED, JAFFEE, OTIS, TITONE, CAHILL, THIELE, GALEF, KAVANAGH -- Multi-Sponsored by -- M. of A. ABBATE, BLAKE, COOK, ENGLEBRIGHT, GIGLIO, GLICK, HEVESI, HIKIND, LENTOL, MARKEY, McDONOUGH, MONTESANO, PICHARDO, RAIA -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and the state administrative procedure act, in relation to the membership of the public service commission and in relation to clarifying the mandatory time frames 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. Section 4 of the public service law, as amended by chapter 155 of the laws of 1970, is amended to read as follows:

S 4. The public service commission. (A) 1. There shall be in the department of public service a public service commission, which shall possess the powers and duties hereinafter specified, and also all powers necessary or proper to enable it to carry out the purposes of this chapter. The commission shall consist of [five] ELEVEN members, NINE VOTING AND TWO NON-VOTING, AS FOLLOWS: SEVEN VOTING MEMBERS to be appointed by the governor, by and with the advice and consent of the senate, ONE UPON THE RECOMMENDATION OF THE ATTORNEY GENERAL AND ONE UPON THE RECOMMENDATION OF THE STATE COMPTROLLER; ONE VOTING MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY; ONE VOTING MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; AND ONE NON-VOTING MEMBER APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY AND ONE NON-VOTING MEMBER APPOINTED BY THE MINORITY LEADER OF THE SENATE. [A commissioner shall be designated as chairman of the commission by the governor to serve in such capacity at the pleasure of the governor or until his term as commissioner expires whichever first occurs. No more than three commissioners may be members of the same political party unless, pursuant to action taken under

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

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subdivision two, the number of commissioners shall exceed five, and in such event no more than four commissioners may be members of the same political party.] THE GOVERNOR SHALL APPOINT A CHAIRPERSON FROM AMONG THE VOTING MEMBERS OF THE COMMISSION.

(B) TO THE MAXIMUM EXTENT POSSIBLE, THE COMMISSIONERS SHALL POSSESS BROAD AND EXTENSIVE KNOWLEDGE AND EXPERIENCE IN THE AREAS OF ENERGY AND TELECOMMUNICATIONS ISSUES, FINANCING AND REGULATION OF UTILITIES, RATE-MAKING, OR CONSUMER PROTECTION AND ADVOCACY. AT LEAST ONE OF THE GOVERNOR'S APPOINTMENTS SHALL BE AN INDIVIDUAL WHO HAS DEMONSTRATED IN HIS OR HER CAREER A COMMITMENT AND COMPETENCE IN CONSUMER ADVOCACY OR IN FURTHERING THE PUBLIC INTEREST IN ONE OR MORE AREAS RELEVANT TO UTILITY REGULATION.

2. [Notwithstanding subdivision one, whenever the commission shall certify to the governor that additional commissioners are needed for the proper disposition of the business before it, the governor may increase the membership of the commission to seven members by appointing two additional commissioners by and with the advice and consent of the senate. The terms of office of such additional commissioners and the filling of vacancies during such terms shall be governed by subdivision three, except that upon the expiration of the terms of such additional commissioners, no further appointments or reappointments shall be made to such additional offices, unless the commission shall first certify to the governor that the need for additional commissioners continues to exist.

3.] The term of office of a commissioner shall be six years from the first day of February of the calendar year in which he shall be appointed and commissioners shall serve on a full-time basis. Upon a vacancy occurring otherwise than by expiration of term in the office of any commissioner, [the governor, by and with the advice and consent of the senate,] THE APPROPRIATE APPOINTING AUTHORITY DESCRIBED IN SUBDIVISION ONE OF THIS SECTION shall fill the vacancy by appointment for the unexpired term, PROVIDED THAT ANY APPOINTMENT MADE BY THE GOVERNOR TO FILL A VACANCY PURSUANT TO THIS SUBDIVISION SHALL BE BY AND WITH THE ADVICE AND CONSENT OF THE SENATE.

S 2. Section 20 of the public service law is amended by adding a new subdivision 3 to read as follows:

3. NOTWITHSTANDING ANY PROVISIONS OF LAW TO THE CONTRARY, THE COMMISSION SHALL ADOPT RULES TO PROHIBIT OR LIMIT THE USE OF EX PARTE COMMUNICATIONS IN ANY PROCEEDING BEFORE THE COMMISSION. SUCH RULES SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) WHETHER EX PARTE COMMUNICATIONS SHOULD BE ABSOLUTELY BARRED, LIMITED OR REQUIRE NOTICE TO ALL PARTIES AND AN OPPORTUNITY TO RESPOND;

(B) THE TIMING OF, OR SPECIFIC TRIGGERING EVENT FOR, THE IMPOSITION OF A BAN OR LIMITATION ON EX PARTE COMMUNICATIONS; AND

(C) SANCTIONS FOR VIOLATING SUCH RULES.

S 3. The public service law is amended by adding a new section 28 to read as follows:

S 28. 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 COMMISSION; 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, WHICH DATE SHALL OCCUR NOT LATER THAN SIXTY DAYS FROM THE DATE OF THE WRITTEN DOCUMENT, 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 4. The opening paragraph of section 64 of the public service law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. NO PROVISION OF THIS ARTICLE OR OF THIS CHAPTER SHALL AUTHORIZE THE DEPARTMENT OR THE COMMISSION TO WAIVE OR REDUCE COMPLIANCE WITH ANY REQUIREMENT OF THIS ARTICLE FOR ANY GAS OR ELECTRIC CORPORATION.

S 5. The opening paragraph of section 89-p of the public service law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. NO PROVISION OF THIS ARTICLE OR OF THIS CHAPTER SHALL AUTHORIZE THE DEPARTMENT OR COMMISSION TO WAIVE OR REDUCE COMPLIANCE WITH ANY REQUIREMENT OF THIS ARTICLE FOR ANY WATER-WORKS CORPORATION.

S 6. Section 90 of the public service law is amended by adding a new subdivision 4 to read as follows:

4. NO PROVISIONS OF THIS ARTICLE OR OF THIS CHAPTER SHALL AUTHORIZE THE DEPARTMENT OR COMMISSION TO WAIVE OR REDUCE COMPLIANCE WITH ANY REQUIREMENT OF THIS ARTICLE FOR ANY TELEGRAPH OR TELEPHONE CORPORATION.

S 7. Subdivision 2 of section 307 of the state administrative procedure act is amended to read as follows:

2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

[This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.]

S 8. 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 9. 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 10. This act shall take effect immediately.