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

180--A

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I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. DINOWITZ, PAULIN, BRENNAN, GOTTFRIED, ROSENTHAL, ZEBROWSKI, SKOUFIS, CRESPO, ROBINSON, MARKEY, WEPRIN, JAFFEE, GALEF, CAHILL, COLTON, LIFTON, ABINANTI, HEVESI, COOK, STIRPE, STECK, SKARTADOS, LUPARDO, MAYER, GUNTHER, MOSLEY, ORTIZ, BRINDISI, PERRY, SEPULVEDA, McDONALD, KEARNS, RAIA, MONTESANO, SANTABARBARA, SIMOTAS, JEAN-PIERRE, MILLER, HOOPER, ARROYO, JOYNER, FAHY, OTIS, KAMINSKY, PEOPLES-STOKES, HUNTER -- Multi-Sponsored by -- M. of A. CLARK, ENGLEBRIGHT, GLICK, MURRAY, RIVERA, SCHIMEL, SIMANOWITZ, SIMON, THIELE -- 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 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:

Section 1. The public service law is amended by adding a new article 1-A to read as follows:

ARTICLE 1-A

THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE

SECTION 28-A. DEFINITIONS.

28-B. ESTABLISHMENT OF THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE.

28-C. POWERS OF THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE.

28-D. REPORTS.

S 28-A. DEFINITIONS. WHEN USED IN THIS ARTICLE: (A) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SERVICE.

(B) "COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.

(C) "RESIDENTIAL UTILITY CUSTOMER" MEANS ANY PERSON WHO IS SOLD OR OFFERED FOR SALE RESIDENTIAL UTILITY SERVICE BY A UTILITY COMPANY.

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

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(D) "UTILITY COMPANY" MEANS ANY PERSON OR ENTITY OPERATING AN AGENCY FOR PUBLIC SERVICE, INCLUDING, BUT NOT LIMITED TO, THOSE PERSONS OR ENTITIES SUBJECT TO THE JURISDICTION, SUPERVISION AND REGULATIONS PRESCRIBED BY OR PURSUANT TO THE PROVISIONS OF THIS CHAPTER.

S 28-B. ESTABLISHMENT OF THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE. THERE IS ESTABLISHED THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE TO REPRESENT THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS. THE UTILITY CONSUMER ADVOCATE SHALL BE APPOINTED BY THE GOVERNOR TO A TERM OF SIX YEARS, UPON THE ADVICE AND CONSENT OF THE SENATE. THE UTILITY CONSUMER ADVOCATE SHALL POSSESS KNOWLEDGE AND EXPERIENCE IN MATTERS AFFECTING RESIDENTIAL UTILITY CUSTOMERS AND SHALL BE RESPONSIBLE FOR THE DIRECTION, CONTROL, AND OPERATION OF THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE, INCLUDING ITS HIRING OF STAFF AND RETENTION OF EXPERTS FOR ANALYSIS AND TESTIMONY IN PROCEEDINGS. THE UTILITY CONSUMER ADVOCATE SHALL NOT BE REMOVED FOR CAUSE, BUT MAY BE REMOVED ONLY AFTER NOTICE AND OPPORTUNITY TO BE HEARD, AND ONLY FOR PERMANENT DISABILITY, MALFEASANCE, A FELONY, OR CONDUCT INVOLVING MORAL TURPITUDE. EXERCISE OF INDEPENDENT JUDGMENT IN ADVOCATING POSITIONS ON BEHALF OF RESIDENTIAL UTILITY CUSTOMERS SHALL NOT CONSTITUTE CAUSE FOR REMOVAL OF THE UTILITY CONSUMER ADVOCATE.

S 28-C. POWERS OF THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE. THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE SHALL HAVE THE POWER AND DUTY TO: (A) INITIATE, INTERVENE IN, OR PARTICIPATE ON BEHALF OF RESIDENTIAL UTILITY CUSTOMERS IN ANY PROCEEDINGS BEFORE THE COMMISSION, THE FEDERAL ENERGY REGULATORY COMMISSION, THE FEDERAL COMMUNICATIONS COMMISSION, FEDERAL, STATE AND LOCAL ADMINISTRATIVE AND REGULATORY AGENCIES, AND STATE AND FEDERAL COURTS IN ANY MATTER OR PROCEEDING THAT MAY SUBSTANTIALLY AFFECT THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS, INCLUDING, BUT NOT LIMITED TO, A PROPOSED CHANGE OF RATES, CHARGES, TERMS AND CONDITIONS OF SERVICE, THE ADOPTION OF RULES, REGULATIONS, GUIDELINES, ORDERS, STANDARDS OR FINAL POLICY DECISIONS WHERE THE UTILITY CONSUMER ADVOCATE DEEMS SUCH INITIATION, INTERVENTION OR PARTICIPATION TO BE NECESSARY OR APPROPRIATE;

(B) REPRESENT THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS OF THE STATE BEFORE FEDERAL, STATE AND LOCAL ADMINISTRATIVE AND REGULATORY AGENCIES ENGAGED IN THE REGULATION OF ENERGY, TELECOMMUNICATIONS, WATER, AND OTHER UTILITY SERVICES, AND BEFORE STATE AND FEDERAL COURTS IN ACTIONS AND PROCEEDINGS TO REVIEW THE ACTIONS OF UTILITIES OR ORDERS OF UTILITY REGULATORY AGENCIES. ANY ACTION OR PROCEEDING BROUGHT BY THE UTILITY CONSUMER ADVOCATE BEFORE A COURT OR AN AGENCY SHALL BE BROUGHT IN THE NAME OF THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE. THE UTILITY CONSUMER ADVOCATE MAY JOIN WITH A RESIDENTIAL UTILITY CUSTOMER OR GROUP OF RESIDENTIAL UTILITY CUSTOMERS IN BRINGING AN ACTION;

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

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

(II) THE UTILITY CONSUMER ADVOCATE SHALL EXERCISE HIS OR HER INDEPENDENT DISCRETION IN DETERMINING THE INTERESTS OF RESIDENTIAL UTILITY CUSTOMERS THAT WILL BE ADVOCATED IN ANY PROCEEDING, AND DETERMINING WHETHER TO PARTICIPATE IN OR INITIATE ANY PROCEEDING AND, IN SO DETERMINING, SHALL CONSIDER THE PUBLIC INTEREST, THE RESOURCES AVAILABLE, AND THE SUBSTANTIALITY OF THE EFFECT OF THE PROCEEDING ON THE INTEREST OF RESIDENTIAL UTILITY CUSTOMERS;

(D) REQUEST AND RECEIVE FROM ANY STATE OR LOCAL AUTHORITY, AGENCY, DEPARTMENT OR DIVISION OF THE STATE OR POLITICAL SUBDIVISION SUCH ASSISTANCE, PERSONNEL, INFORMATION, BOOKS, RECORDS, OTHER DOCUMENTATION AND COOPERATION NECESSARY TO PERFORM ITS DUTIES; AND

(E) ENTER INTO COOPERATIVE AGREEMENTS WITH OTHER GOVERNMENT OFFICES TO EFFICIENTLY CARRY OUT ITS WORK.

S 28-D. REPORTS. ON JULY FIRST, TWO THOUSAND SEVENTEEN AND ANNUALLY THEREAFTER, THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE SHALL ISSUE A REPORT TO THE GOVERNOR AND THE LEGISLATURE, AND MAKE SUCH REPORT AVAILABLE TO THE PUBLIC FREE OF CHARGE ON A PUBLICLY AVAILABLE WEBSITE, CONTAINING, BUT NOT LIMITED TO, THE FOLLOWING INFORMATION:

(A) ALL PROCEEDINGS THAT THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE PARTICIPATED IN AND THE OUTCOME OF SUCH PROCEEDINGS, TO THE EXTENT OF SUCH OUTCOME AND IF NOT CONFIDENTIAL;

(B) ESTIMATED SAVINGS TO RESIDENTIAL UTILITY CONSUMERS THAT RESULTED FROM INTERVENTION BY THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE; AND

(C) POLICY RECOMMENDATIONS AND SUGGESTED STATUTORY AMENDMENTS THAT THE STATE OFFICE OF THE UTILITY CONSUMER ADVOCATE DEEMS NECESSARY.

S 2. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.