

# STATE OF NEW YORK

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4824--A

2021-2022 Regular Sessions

## IN SENATE

February 12, 2021

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Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to storm hardening and system resiliency plans (Part A); and to amend the public service law, in relation to providing rate payers with reimbursement following prolonged power outages (Part B)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Each component of this act is wholly contained within a  
2 part identified parts A and B. The effective date for each particular  
3 provision contained within such part is set forth in the last section of  
4 such part. Any provision in any section contained within a part, includ-  
5 ing the effective date of the part, which makes reference to a section  
6 "of this act", when used in connection with that particular component,  
7 shall be deemed to mean and refer to the corresponding section of the  
8 part in which it is found. Section three of this act sets forth the  
9 general effective date of this act.

### 10 PART A

11 Section 1. Legislative findings. 1. The Legislature hereby finds and  
12 declares that, due to the rise in storm intensity, and effects of  
13 climate change, dedicated storm hardening programs need to be developed  
14 and implemented throughout New York State to reduce damage and costs  
15 from future weather events, as well as facilitate prompt restoration  
16 times. Storm hardening is the process of constructing new, or upgrading  
17 old, infrastructure to increase resiliency and overall reliability  
18 during weather events. In 2018, Winter Storm Riley and Winter Storm  
19 Quinn greatly impacted New York's electric distribution system with

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

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1 nearly 500,000 customers losing power. In August 2020, Tropical Storm  
2 Isaias brought high winds, downed trees and widespread power outages to  
3 much of the state; hundreds of thousands of customers in Long Island,  
4 New York City, Westchester and Rockland counties experienced extensive  
5 power outages, some lasting for more than a week. Legislative hearings  
6 following these storms made it clear that enhanced storm hardening  
7 efforts are needed to mitigate some of the impacts to the distribution  
8 infrastructure and customers;

9 2. It is in the state's interest to strengthen electric utility  
10 infrastructure to withstand extreme weather conditions, and the effects  
11 of climate change by promoting the hardening of electrical transmission  
12 and distribution facilities, the undergrounding of certain electrical  
13 distribution lines, and enhanced vegetation management, including the  
14 removal of danger trees, as well as long term planning;

15 3. Protecting and strengthening transmission and distribution elec-  
16 trical utility infrastructure from extreme weather conditions, and the  
17 effect of climate change, can effectively reduce restoration costs and  
18 outage times to customers and improve overall service reliability for  
19 customers;

20 4. It is in the state's interest for each utility to mitigate restora-  
21 tion costs and outage times to utility customers when developing trans-  
22 mission and distribution storm protection plans; and

23 5. All customers benefit from the reduced costs of storm restoration.

24 § 2. Section 66 of the public service law is amended by adding a new  
25 subdivision 29 to read as follows:

26 29. (a) Each electric corporation subject to section twenty-five-a of  
27 this chapter shall prepare and submit a climate change vulnerability  
28 study to the commission within eighteen months of the effective date of  
29 this act. The commission shall provide such study to the governor and  
30 the legislature. The climate change vulnerability study shall evaluate  
31 the electric corporation's infrastructure, design specifications, and  
32 procedures to better understand the corporation's vulnerability to  
33 climate-driven risks, and shall include, but not be limited to, adapta-  
34 tion measures to address vulnerabilities and any other information  
35 deemed necessary by the commission.

36 (b) Within sixty days from submission of a climate change vulnerabili-  
37 ty study to the commission, each electric corporation subject to section  
38 twenty-five-a of this chapter shall, pursuant to regulation by the  
39 commission, submit a climate resilience plan to the commission for  
40 review and approval. Each plan shall: (i) propose storm hardening and  
41 resiliency measures for the next ten years and twenty years, and shall  
42 explain the systematic approach the corporation will follow to achieve  
43 the objectives of mitigating the impacts of climate change to utility  
44 infrastructure, reducing restoration costs and outage times associated  
45 with extreme weather events, and enhancing reliability, as well as such  
46 other additional objectives the commission may require consistent with  
47 ensuring increased resiliency of utility infrastructure and overall  
48 reliability during extreme weather events; (ii) detail how the corpo-  
49 ration will incorporate climate change into its planning, design, oper-  
50 ations, and emergency response; (iii) incorporate climate change into  
51 existing processes and practices, manage climate change risks and build  
52 resilience; and (iv) propose adjustments, as necessary, to how the  
53 corporation plans and designs infrastructure for the increasing impacts  
54 from climate change. The commission shall adopt rules to specify any  
55 additional elements that must be included in a corporation's filing for  
56 review of climate resilience plans.

1 (c) Each subject electric corporation shall contemporaneously serve  
2 the climate resilience plan on the parties from its last rate case filed  
3 pursuant to subdivision twelve of this section.

4 (d) In its review of each climate resilience plan filed pursuant to  
5 this subdivision, the commission shall, at minimum, consider:

6 (i) the extent to which the plan is expected to mitigate the impacts  
7 of climate change, reduce restoration costs and outage times associated  
8 with extreme weather events, and enhance reliability, including whether  
9 the plan examines areas of lower reliability performance;

10 (ii) the extent to which storm protection and hardening of trans-  
11 mission and distribution infrastructure is feasible, reasonable, or  
12 practical in certain areas of the corporation's service territory,  
13 including, but not limited to, coastal areas, flood zones, and rural  
14 areas;

15 (iii) the estimated costs and benefits to the corporation and its  
16 customers of making the improvements proposed in the plan, including  
17 considerations of equity in the plan as applied across the entire  
18 service territory, with particular attention paid to the costs and bene-  
19 fits in undergrounding transmission and distribution lines;

20 (iv) the timeline for implementation of the plan;

21 (v) whether the plan includes major performance benchmarks that meas-  
22 ure the effectiveness of the implementation of the plan;

23 (vi) the estimated annual rate impact resulting from implementation of  
24 the plan during the first five years addressed in the plan;

25 (vii) the extent to which the plan considers a multi-pronged strategy  
26 appropriately tailored to addressing the impacts of climate change,  
27 reducing restoration costs and outage times and enhancing infrastructure  
28 reliability, including, but not limited to, vegetation management,  
29 improvements to system management practices, undergrounding of distrib-  
30 ution and transmission lines, replacement of obsolete cables, wires and  
31 poles, automation and circuit reconfiguration, investing in infrastruc-  
32 ture that supports the development of technologies that would improve  
33 response to extreme weather events and reduce restoration costs, and  
34 system resiliency through the deployment of distributed energy  
35 resources, and fortifying critical facilities;

36 (viii) the extent to which the plan identifies opportunities for coor-  
37 dination with municipalities, customer advocate groups, the independent  
38 system operator, the energy research and development authority, and  
39 other utility or telecommunication service providers; and,

40 (ix) the recommendations from the utility climate resilience working  
41 group established pursuant to paragraph (h) of this subdivision.

42 (e) No later than eleven months after a corporation files a climate  
43 resilience plan that contains all of the elements required by this  
44 subdivision, and after a public hearing on the plan, which shall include  
45 a public forum at a physical location, attended by commission members or  
46 their designees to take in written or oral comment, the commission shall  
47 determine whether it is in the public interest to approve or modify the  
48 plan.

49 (f) At least every five years after approval of a corporation's  
50 climate resilience plan, the corporation must file for commission review  
51 an updated plan that addresses each element specified by commission  
52 regulation. The commission shall approve, modify, or deny each updated  
53 plan pursuant to the criteria used to review the initial plan.

54 (g) Each corporation shall make an annual filing to recover the corpo-  
55 ration's climate resilience plan costs through a charge separate and  
56 apart from its base rates, to be referred to as the climate resilience

1 plan cost recovery clause. If the commission determines that such costs  
2 are just and reasonable, in the public interest, and were prudently  
3 incurred, those costs will not be subject to disallowance or further  
4 reasonableness or prudence review except for fraud, perjury, or inten-  
5 tional withholding of key information by the corporation, or if the  
6 commission finds that the corporation has imprudently implemented the  
7 plan. The annual climate resilience plan costs may not include costs  
8 recovered through the corporation's base rates and must be allocated to  
9 customer classes pursuant to the rate design most recently approved by  
10 the commission. If a capital expenditure is recoverable as a climate  
11 resilience plan cost, the corporation may recover the annual depreci-  
12 ation on the cost, calculated at the corporation's current approved  
13 depreciation rates, and a return on the undepreciated balance of the  
14 costs calculated at the corporation's weighted average cost of capital  
15 using the last approved return on equity.

16 (h) Each corporation shall establish a utility climate resilience  
17 working group no later than one year after the effective date of this  
18 subdivision. Such working group shall advise and make recommendations to  
19 the corporation and the commission on the development and implementation  
20 of the corporation's climate resilience plan. The working group shall be  
21 comprised of representatives from the department, and municipal repre-  
22 sentatives, customer advocacy groups, and energy and environmental advoca-  
23 cacy organizations. The working group shall meet at least twice annual-  
24 ly.

25 (i) Each corporation shall provide to the county executive or the  
26 chief elected official of a county for each county within its service  
27 territory the most recent approved copy of the climate resilience plan  
28 required pursuant to this subdivision. For the purposes of an electric  
29 corporation operating within the city of New York, such corporation  
30 shall provide the most recent approved climate resilience plan with both  
31 the mayor's office and emergency management office of the city of New  
32 York.

33 (j) The commission shall provide access to such climate resilience  
34 plans pursuant to article six of the public officers law.

35 (k) Beginning December first of the year after the first full year of  
36 implementation of a climate resilience plan and annually thereafter, the  
37 commission shall submit to the governor and the legislature a report on  
38 the status of each corporation's activities to comply with the plan. The  
39 report shall include, but is not limited to, identification of all storm  
40 protection and resiliency activities completed or planned for  
41 completion, the actual costs and rate impacts associated with completed  
42 activities as compared to the estimated costs and rate impacts for those  
43 activities, the estimated costs and rate impacts associated with activ-  
44 ities planned for completion, and the governance, planning, and opera-  
45 tional activities undertaken by the corporation in furtherance of the  
46 climate resilience plan.

47 (l) The commission shall promulgate any necessary rules and regu-  
48 lations to implement and administer the provisions of this subdivision.

49 § 3. This act shall take effect on the ninetieth day after it shall  
50 have become a law. Effective immediately, the promulgation of any rules  
51 or regulations by the Public Service Commission necessary for the imple-  
52 mentation of this act on its effective date are authorized to be made  
53 and completed on or before such effective date.

1 Section 1. The public service law is amended by adding a new section  
2 73 to read as follows:

3 § 73. Compensation to customers experiencing widespread prolonged  
4 outages. 1. Notwithstanding any other provision of law, in the event  
5 that a residential utility customer or a small business customer experi-  
6 ences a widespread prolonged outage lasting at least seventy-two consec-  
7 utive hours or more without having been resolved by the utility company,  
8 the utility company shall:

9 (a) Provide a credit of twenty-five dollars on the balance of such  
10 residential utility customer's account for each subsequent twenty-four  
11 hour period of service outage that occurs for such customers for more  
12 than seventy-two consecutive hours after the occurrence of such wide-  
13 spread prolonged outage.

14 (b) Provide reimbursement of any food spoiled due to lack of refriger-  
15 ation. Residential utility customers shall provide the utility company  
16 an itemized list of all food spoiled or proof of loss of food spoiled  
17 within fourteen days of the outage. The utility company shall reimburse  
18 the customer within thirty days of the receipt of the itemized list or  
19 proof of loss, provided, however, that if the utility company has  
20 applied for a waiver pursuant to subdivision three of this section, such  
21 utility company shall reimburse the customer within a time period to be  
22 determined by the commission after the commission renders a decision on  
23 the waiver request. The amount of the reimbursement shall not exceed a  
24 total of two hundred thirty-five dollars for customers who provide an  
25 itemized list. The amount of the reimbursement for customers who provide  
26 proof of loss shall not exceed five hundred forty dollars.

27 (c) Provide reimbursement of prescription medication spoiled due to  
28 lack of refrigeration. Residential utility customers shall provide the  
29 utility company with an itemized list and proof of loss of prescription  
30 medication due to lack of refrigeration within fourteen days of the  
31 outage. The utility company shall reimburse the customer within thirty  
32 days of the receipt of the itemized list and proof of loss of  
33 prescription medication, provided, however, that if the utility company  
34 has applied for a waiver pursuant to subdivision three of this section,  
35 such utility company shall reimburse the customer within a time period  
36 to be determined by the commission after the commission renders a deci-  
37 sion on the waiver request. The amount of the reimbursement shall total  
38 no more than the actual loss of perishable prescription medicine.

39 (d) Provide reimbursement to small business customers for any food  
40 spoiled due to lack of refrigeration. Small business customers shall  
41 provide the utility company with an itemized list for all food spoiled  
42 and proof of loss within fourteen days of the outage. The utility compa-  
43 ny shall reimburse the small business customer within thirty days of the  
44 receipt of the itemized list and proof of loss, provided, however, that  
45 if the utility company has applied for a waiver pursuant to subdivision  
46 three of this section, such utility company shall reimburse the small  
47 business customer within a time period to be determined by the commis-  
48 sion after the commission renders a decision on the waiver request. The  
49 amount of their imbursement shall not exceed five hundred forty dollars.

50 2. Any costs incurred by a utility company pursuant to this section  
51 shall not be recoverable from ratepayers.

52 3. Not later than fourteen calendar days after the occurrence of a  
53 widespread prolonged outage, a utility company may petition the commis-  
54 sion for a waiver of the requirements of this section. The company shall  
55 have the burden of demonstrating that granting the waiver is fair,  
56 reasonable and in the public interest. In determining whether to grant

1 such waiver, the commission shall consider: (a) whether the company  
2 complied with their submitted emergency response plan pursuant to the  
3 provisions of subdivision twenty-one of section sixty-six of this arti-  
4 cle; (b) whether any actions or omissions of the company contributed to  
5 the prolonging of the widespread prolonged outage; (c) the hardships  
6 endured by said company's customers due to the widespread prolonged  
7 outage; (d) the severity of the widespread prolonged outage; (e) condi-  
8 tions on the ground during the widespread prolonged outage and the  
9 subsequent restoration; (f) balancing of the equities; and (g) any other  
10 criteria the commission deems in the public interest to consider. The  
11 commission shall issue a final decision regarding the grant of the  
12 requested waiver no later than forty-five days after submission of the  
13 petition.

14 4. The commission shall promulgate procedures, standards, methodol-  
15 ogies and rules necessary to implement the provisions of this section.  
16 Such rules and regulations shall define the terms "widespread prolonged  
17 outage", "small business customer" and "proof of loss".

18 § 2. Severability. If any provision of this act or the application  
19 thereof to any person, corporation or circumstances is held invalid,  
20 such invalidity shall not affect other provisions or applications of the  
21 act which can be given effect without the invalid provision or applica-  
22 tion, and to this end the provisions of this act are declared to be  
23 severable.

24 § 3. This act shall take effect on the one hundred twentieth day after  
25 it shall have become a law. Effective immediately, the addition, amend-  
26 ment and/or repeal of any rule or regulation necessary for the implemen-  
27 tation of this act on its effective date are authorized to be made and  
28 completed on or before such effective date.

29 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
30 sion, section or part of this act shall be adjudged by any court of  
31 competent jurisdiction to be invalid, such judgment shall not affect,  
32 impair, or invalidate the remainder thereof, but shall be confined in  
33 its operation to the clause, sentence, paragraph, subdivision, section  
34 or part thereof directly involved in the controversy in which such judg-  
35 ment shall have been rendered. It is hereby declared to be the intent of  
36 the legislature that this act would have been enacted even if such  
37 invalid provisions had not been included herein.

38 § 3. This act shall take effect immediately provided, however, that  
39 the applicable effective date of parts A through B of this act shall be  
40 as specifically set forth in the last section of such parts.