STATE OF NEW YORK

3360--A

Cal. No. 170

2021-2022 Regular Sessions

IN ASSEMBLY

January 26, 2021

Introduced by M. of A. PAULIN, OTIS, GALEF, VANEL, BARRON, JACOBSON, SANTABARBARA -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Codes -- advanced to a third reading, passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

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

PART A

Section 1. Legislative findings. 1. The Legislature hereby finds and declares that, due to the rise in storm intensity, and effects of climate change, dedicated storm hardening programs need to be developed and implemented throughout New York State to reduce damage and costs from future weather events, as well as facilitate prompt restoration times. Storm hardening is the process of constructing new, or upgrading

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

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old, infrastructure to increase resiliency and overall reliability during weather events. In 2018, Winter Storm Riley and Winter Storm Quinn greatly impacted New York's electric distribution system with nearly 500,000 customers losing power. In August 2020, Tropical Storm Isaias brought high winds, downed trees and widespread power outages to much of the state; hundreds of thousands of customers in Long Island, New York City, Westchester and Rockland counties experienced extensive power outages, some lasting for more than a week. Legislative hearings following these storms made it clear that enhanced storm hardening efforts are needed to mitigate some of the impacts to the distribution infrastructure and customers;

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

3. Protecting and strengthening transmission and distribution electrical utility infrastructure from extreme weather conditions, and the effect of climate change, can effectively reduce restoration costs and outage times to customers and improve overall service reliability for customers;

4. It is in the state's interest for each utility to mitigate restoration costs and outage times to utility customers when developing transmission and distribution storm protection plans; and

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

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

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

(b) Within sixty days from submission of a climate change vulnerability study to the commission, each electric corporation subject to section twenty-five-a of this chapter shall, pursuant to regulation by the commission, submit a climate resilience plan to the commission for review and approval. Each plan shall: (i) propose storm hardening and resiliency measures for the next ten years and twenty years, and shall explain the systematic approach the corporation will follow to achieve the objectives of mitigating the impacts of climate change to utility infrastructure, reducing restoration costs and outage times associated with extreme weather events, and enhancing reliability, as well as such other additional objectives the commission may require consistent with ensuring increased resiliency of utility infrastructure and overall reliability during extreme weather events; (ii) detail how the corporation will incorporate climate change into its planning, design, operations, and emergency response; (iii) incorporate climate change into existing processes and practices, manage climate change risks and build resilience; and (iv) propose adjustments, as necessary, to how the corporation plans and designs infrastructure for the increasing impacts

from climate change. The commission shall adopt rules to specify any additional elements that must be included in a corporation's filing for review of climate resilience plans.

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

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

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

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

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

(iv) the timeline for implementation of the plan;

(v) whether the plan includes major performance benchmarks that measure the effectiveness of the implementation of the plan;

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

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

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

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

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

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

(g) Each corporation shall make an annual filing to recover the corporation's climate resilience plan costs through a charge separate and apart from its base rates, to be referred to as the climate resilience plan cost recovery clause. If the commission determines that such costs are just and reasonable, in the public interest, and were prudently incurred, those costs will not be subject to disallowance or further reasonableness or prudence review except for fraud, perjury, or intentional withholding of key information by the corporation, or if the commission finds that the corporation has imprudently implemented the plan. The annual climate resilience plan costs may not include costs recovered through the corporation's base rates and must be allocated to customer classes pursuant to the rate design most recently approved by the commission. If a capital expenditure is recoverable as a climate resilience plan cost, the corporation may recover the annual depreciation on the cost, calculated at the corporation's current approved depreciation rates, and a return on the undepreciated balance of the costs calculated at the corporation's weighted average cost of capital using the last approved return on equity.

(h) Each corporation shall establish a utility climate resilience working group no later than one year after the effective date of this subdivision. Such working group shall advise and make recommendations to the corporation and the commission on the development and implementation of the corporation's climate resilience plan. The working group shall be comprised of representatives from the department, and municipal representatives, customer advocacy groups, and energy and environmental advocacy organizations. The working group shall meet at least twice annually.

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

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

(k) Beginning December first of the year after the first full year of implementation of a climate resilience plan and annually thereafter, the commission shall submit to the governor and the legislature a report on the status of each corporation's activities to comply with the plan. The report shall include, but is not limited to, identification of all storm protection and resiliency activities completed or planned for completion, the actual costs and rate impacts associated with completed activities as compared to the estimated costs and rate impacts for those activities, the estimated costs and rate impacts associated with activities planned for completion, and the governance, planning, and operational activities undertaken by the corporation in furtherance of the climate resilience plan.

(l) The commission shall promulgate any necessary rules and regulations to implement and administer the provisions of this subdivision.

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

PART B

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

§ 73. Compensation to customers experiencing widespread prolonged outages. 1. Notwithstanding any other provision of law, in the event that a residential utility customer or a small business customer experiences a widespread prolonged outage lasting at least seventy-two consecutive hours or more without having been resolved by the utility company, the utility company shall:

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

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

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

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

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

3. Not later than fourteen calendar days after the occurrence of a widespread prolonged outage, a utility company may petition the commission for a waiver of the requirements of this section. The company shall

have the burden of demonstrating that granting the waiver is fair, reasonable and in the public interest. In determining whether to grant such waiver, the commission shall consider: (a) whether the company complied with their submitted emergency response plan pursuant to the provisions of subdivision twenty-one of section sixty-six of this article; (b) whether any actions or omissions of the company contributed to the prolonging of the widespread prolonged outage; (c) the hardships endured by said company's customers due to the widespread prolonged outage; (d) the severity of the widespread prolonged outage; (e) conditions on the ground during the widespread prolonged outage and the subsequent restoration; (f) balancing of the equities; and (g) any other criteria the commission deems in the public interest to consider. The commission shall issue a final decision regarding the grant of the requested waiver no later than forty-five days after submission of the petition.

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

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

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

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

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