

# STATE OF NEW YORK

873--A

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. CAHILL, L. ROSENTHAL, THIELE -- Multi-Sponsored by -- M. of A. GLICK, GOTTFRIED, HEVESI -- read once and referred to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to utility intervenor reimbursement; and to amend the state finance law, in relation to establishing the utility intervenor account

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

1 Section 1. The public service law is amended by adding a new section  
2 24-c to read as follows:

3 § 24-c. Utility intervenor reimbursement. 1. As used in this  
4 section, the following terms shall have the following meanings:

5 (a) "Compensation" means payment from the utility intervenor account  
6 fund established by section ninety-seven-uuuu of the state finance law,  
7 for all or part, as determined by the department, of reasonable advo-  
8 cate's fees, reasonable expert witness fees, and other reasonable costs  
9 for preparation and participation in a proceeding.

10 (b) "Participant" means a group of persons that apply jointly for an  
11 award of compensation under this section and who represent the interests  
12 of a significant number of residential or small business customers, or a  
13 not-for-profit organization in this state authorized pursuant to its  
14 articles of incorporation or bylaws to represent the interests of resi-  
15 dential or small business utility customers. For purposes of this  
16 section, a participant does not include a non-profit organization or  
17 other organization whose principal interests are the welfare of a public  
18 utility or its investors or employees, or the welfare of one or more  
19 businesses or industries which receive utility service ordinarily and  
20 primarily for use in connection with the profit-seeking manufacture,  
21 sale, or distribution of goods or services.

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

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1 (c) "Other reasonable costs" means reasonable out-of-pocket expenses  
2 directly incurred by a participant that are directly related to the  
3 contentions or recommendations made by the participant that resulted in  
4 a substantial contribution.

5 (d) "Party" means any interested party, respondent public utility, or  
6 commission staff in a hearing or proceeding.

7 (e) "Proceeding" means a complaint, or investigation, rulemaking, or  
8 other formal proceeding before the commission, or alternative dispute  
9 resolution procedures in lieu of formal proceedings as may be sponsored  
10 or endorsed by the commission, provided however such proceedings shall  
11 be limited to those arising under and proceeding pursuant to the follow-  
12 ing articles of this chapter: (1) the regulation of the price of gas and  
13 electricity, pursuant to article four of this chapter except those  
14 described in subparagraph (ii) of paragraph (c) of subdivision twelve of  
15 section sixty-six of this chapter; (2) the regulation of the price of  
16 steam, pursuant to article four-A of this chapter; (3) the submetering,  
17 remetering or resale of electricity to residential premises, pursuant to  
18 sections sixty-five and sixty-six of this chapter, and pursuant to regu-  
19 lations regarding the submetering, remetering, or resale of electricity  
20 adopted by the commission; and (4) such sections of this chapter as are  
21 applicable to a proceeding in which the commission makes a finding on  
22 the record that the public interest requires the reimbursement of utili-  
23 ty intervenor fees pursuant to this section.

24 (f) "Significant financial hardship" means that the participant will  
25 be unable to afford, without undue hardship, to pay the costs of effec-  
26 tive participation, including advocate's fees, expert witness fees, and  
27 other reasonable costs of participation.

28 (g) "Small business" means a business with a gross annual revenue of  
29 two hundred fifty thousand dollars or less.

30 (h) "Substantial contribution" means that, in the judgment of the  
31 department, the participant's application may substantially assist the  
32 commission in making its decision because the decision may adopt in  
33 whole or in part one or more factual contentions, legal contentions, or  
34 specific policy or procedural recommendations that will be presented by  
35 the participant.

36 2. A participant may apply for an award of compensation under this  
37 section in a proceeding in which such participant has sought active  
38 party status as defined by the department. The department shall deter-  
39 mine appropriate procedures for accepting and responding to such appli-  
40 cations. At the time of application, such participant shall serve on  
41 every party to the proceeding notice of intent to apply for an award of  
42 compensation.

43 An application shall include:

44 (a) A statement of the nature and extent and the factual and legal  
45 basis of the participant's planned participation in the proceeding as  
46 far as it is possible to describe such participation with reasonable  
47 specificity at the time the application is filed.

48 (b) At minimum, a reasonably detailed description of anticipated advo-  
49 cates and expert witness fees and other costs of preparation and partici-  
50 ipation that the participant expects to request as compensation.

51 (c) If participation or intervention will impose a significant finan-  
52 cial hardship and the participant seeks payment in advance to an award  
53 of compensation in order to initiate, continue or complete participation  
54 in the hearing or proceeding, such participant must include evidence of  
55 such significant financial hardship in its application.

56 (d) Any other requirements as required by the department.

1 3. (a) Within thirty days after the filing of an application the  
2 department shall issue a decision that determines whether or not the  
3 participant may make a substantial contribution to the final decision in  
4 the hearing or proceeding. If the department finds that the participant  
5 requesting compensation may make a substantial contribution, the depart-  
6 ment shall describe this substantial contribution and determine the  
7 amount of compensation to be paid pursuant to subdivision four of this  
8 section.

9 (b) Notwithstanding subdivision four of this section, if the depart-  
10 ment finds that the participant has a significant financial hardship,  
11 the department may direct the public utility or utilities subject to the  
12 proceeding to pay all or part of the compensation to the department to  
13 be provided to the participant prior to the end of the proceeding. In  
14 the event that the participant discontinues its participation in the  
15 proceeding without the consent of the department, the department shall  
16 be entitled to, in whole or in part, recover any payments made to such  
17 participant to be refunded to the public utility or utilities that  
18 provided such payment.

19 (c) The computation of compensation pursuant to paragraph (a) of this  
20 subdivision shall take into consideration the market rates paid to  
21 persons of comparable training and experience who offer similar  
22 services. The compensation awarded may not, in any case, exceed the  
23 comparable market rate for services paid by the department or the public  
24 utility, whichever is greater, to persons of comparable training and  
25 experience who are offering similar services.

26 (d) Any compensation awarded to a participant and not used by such  
27 participant shall be returned to the department for refund to the public  
28 utility or utilities that provided such payment.

29 (e) The department shall require that participants seeking payment  
30 maintain an itemized record of all expenditures incurred as a result of  
31 such proceeding.

32 (i) The department may use the itemized record of expenses to verify  
33 the claim of financial hardship by a participant seeking payment pursu-  
34 ant to paragraph (c) of subdivision two of this section.

35 (ii) The department may use the record of expenditures in determining,  
36 after the completion of a proceeding, if any unused funds remain.

37 (iii) The department shall preserve the confidentiality of the partic-  
38 ipant's records in making any audit or determining the availability of  
39 funds after the completion of a proceeding.

40 (f) In the event that the department finds that two or more partic-  
41 ipants' applications have substantially similar interests, the depart-  
42 ment may require such participants to apply jointly in order to receive  
43 compensation.

44 4. Any compensation pursuant to this section shall be paid at the  
45 conclusion of the proceeding by the public utility or utilities subject  
46 to the proceeding within thirty days. Such compensation shall be remit-  
47 ted to the department which shall then remit such compensation to the  
48 participant.

49 5. The department shall deny any award to any participant who attempts  
50 to delay or obstruct the orderly and timely fulfillment of the depart-  
51 ment's responsibilities.

52 § 2. The state finance law is amended by adding a new section 97-uuuu  
53 to read as follows:

54 § 97-uuuu. Utility intervenor account. 1. There is hereby established  
55 in the joint custody of the state comptroller and the commissioner of

1 taxation and finance a fund to be known as the utility intervenor  
2 account.

3 2. Such account shall consist of all utility intervenor reimbursement  
4 monies received from utilities pursuant to section twenty-four-c of the  
5 public service law.

6 § 3. This act shall take effect on the thirtieth day after it shall  
7 have become a law.