

STATE OF NEW YORK

6557--A

2023-2024 Regular Sessions

IN SENATE

April 26, 2023

Introduced by Sen. MAYER -- 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 requiring certain utilities to adopt the common equity ratio and rate of return on equity authorized by the public service commission

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

1 Section 1. Legislative intent. The legislature finds and declares
2 that:
3 1. The increasing burden of high utility rates leaves New York resi-
4 dents with extreme financial difficulties. Soaring electricity rates
5 leave one in five New York residents at risk of having their electricity
6 cut off. Meanwhile, the long-term trend of utilities receiving record
7 profits threatens the livelihood of millions of New Yorkers who struggle
8 to afford utility bills.
9 2. The current process in which the public service commission (herein-
10 after the "commission") and regulated utilities set rates for utility
11 bills to ratepayers has historically been inaccessible and indeciphera-
12 ble to the public and often runs contrary to the stated goals of the
13 commission to ensure affordable, safe, secure, and reliable utility
14 service for New York residential and business consumers.
15 3. Regulated utilities are entitled to earn a fair and reasonable rate
16 of return on their capital investments, pursuant to Supreme Court
17 rulings in Federal Power Commission et al. v. Hope Natural Gas Co.
18 (1944) and Bluefield Water Works and Improvement Co. v. Public Service
19 Commission of West Virginia (1923). However, recent trends suggest that
20 the "fair and reasonable" legal standard is not always reflected in
21 actual utility rates for consumers. Aligning the incentives of regu-
22 lated utilities and ratepayers is essential to protect the interests of

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

LBD10360-04-3

1 all New York residents by establishing a more accurate standard for a
2 regulated utility's right to earn a fair and reasonable rate of return.

3 § 2. The public service law is amended by adding a new section 65-c to
4 read as follows:

5 § 65-c. Setting a rate of return on equity and common equity ratio. 1.
6 Definitions. For the purposes of this section, the following terms shall
7 have the following meanings:

8 (a) "Regulated utility" means an "electric corporation", "gas corpo-
9 ration", "steam corporation", or "water-works corporation" as defined in
10 section two of this chapter.

11 (b) "Generic financing methodology" means a standardized procedure for
12 determining the authorized rates of return on equity and common equity
13 ratios of utilities regulated by the commission.

14 (c) "Authorized common equity ratio" means the authorized percentage
15 of a utility's total capitalization, such as common equity, preferred
16 stock, and long-term debt, that consists of common equity, retained
17 earnings, and capital surplus.

18 (d) "Actual common equity ratio" means the actual percentage of a
19 utility's total capitalization, such as common equity, preferred stock,
20 and long-term debt, that consists of common equity, retained earnings,
21 and capital surplus.

22 (e) "Authorized rate of return on equity" also known as return on
23 equity ("ROE") or the cost of equity capital, means the return on the
24 equity portion of the rate base that regulated utilities are authorized
25 to collect in rates.

26 (f) "Actual rate of return on equity" means a measure of financial
27 performance calculated by dividing net income by shareholders' equity.

28 (g) "Rate period" means the time period in which a regulated utility
29 collects rates that are authorized and approved by the commission.

30 (h) "Publicly available data" means published data that is openly
31 accessible via the internet, or indirectly accessible through a public
32 library or similar institution.

33 2. Setting the generic financing methodology; common equity ratio;
34 rate of return on equity. (a) On an annual basis, the commission shall
35 promulgate rules and regulations that:

36 (i) update the generic financing methodology such that, to the great-
37 est extent possible, all of its calculations are based upon publicly
38 available data;

39 (ii) set a fair and reasonable authorized common equity ratio for each
40 regulated utility and a single authorized rate of return on equity for
41 all regulated utilities, based on the generic financing methodology; and

42 (iii) reconcile the prior rate period's authorized rate of return on
43 equity to a calculation of the average monthly rate of return on equity
44 produced by the generic financing methodology for that rate period, such
45 as a "true-up mechanism". In making this determination, the commission
46 shall require that: (A) any revenues derived from an authorized rate of
47 return on equity exceeding the average monthly rate of return on equity
48 be returned to ratepayers in the form of a surcredit to their bills for
49 the following rate period; and (B) any revenues that would have been
50 derived from an average monthly rate of return on equity exceeding the
51 authorized rate of return on equity shall be recovered from ratepayers
52 in the form of a surcharge to their bills for the following rate period.

53 (b) The promulgated generic financing methodology, authorized common
54 equity ratio, authorized rate of return on equity, and the prior year's
55 average monthly rate of return on equity shall clearly state the methods
56 used to justify and explain its proposed guidance.

1 (c) The promulgated generic financing methodology, authorized common
2 equity ratio, authorized rate of return on equity, and prior rate peri-
3 od's average monthly rate of return on equity shall be subject to tradi-
4 tional notice and comment procedures, as outlined in the state adminis-
5 trative procedure act, which shall include input from public interest
6 organizations, utility accounting experts, representatives from regu-
7 lated utilities, and other organizations and interested parties, includ-
8 ing residents of this state, as necessary.

9 (d) The final generic financing methodology, authorized common equity
10 ratio, authorized rate of return on equity, and prior rate period's
11 average monthly rate of return on equity adopted by the commission,
12 following the notice and comment period, shall give preference to the
13 best interest of the ratepayers.

14 3. Adopting the authorized common equity ratio, authorized rate of
15 return on equity and/or prior rate period's average monthly rate of
16 return on equity. Except as provided in subdivision four of this
17 section, every regulated utility shall:

18 (a) adopt the authorized common equity ratio based on the generic
19 financing methodology for the following rate period as set specifically
20 for each regulated utility by the commission;

21 (b) adopt the authorized rate of return on equity based on the generic
22 financing methodology for the following rate period; and

23 (c) adopt the surcredit/surcharge based on the prior rate period's
24 average monthly rate of return on equity, as outlined in subdivision two
25 of this section, for the following rate period.

26 4. Rebutting the authorized common equity ratio, rate of return on
27 equity, and prior rate period's average monthly rate of return on equi-
28 ty. (a) The burden of rebutting the authorized common equity ratio,
29 authorized rate of return on equity, and/or prior rate period's average
30 monthly rate of return on equity shall rest exclusively with the regu-
31 lated utility during a public hearing facilitated by the commission. In
32 order to rebut the authorized common equity ratio and/or authorized rate
33 of return on equity, the regulated utility shall first initiate a
34 request for public hearing through procedures outlined by the commis-
35 sion. Should the commission find a substantial basis for the claims
36 outlined by the regulated utility in its request, it shall publish a set
37 of dates from which a public hearing shall take place.

38 (b) During the public hearing the regulated utility shall:

39 (i) present documentary evidence, including but not limited to exhib-
40 its, written and oral testimony, and data, describing why the authorized
41 common equity ratio, authorized rate of return on equity, or prior rate
42 period's average monthly rate of return on equity is insufficient to
43 meet its current or future operating and capital needs;

44 (ii) present documentary evidence, including but not limited to exhib-
45 its, written and oral testimony, and data, describing why the authorized
46 common equity ratio, authorized rate of return on equity, or prior rate
47 period's average monthly rate of return on equity does not provide a
48 fair and reasonable return;

49 (iii) describe with sufficient detail why the authorized common equity
50 ratio, authorized rate of return on equity or prior rate period's aver-
51 age monthly rate of return on equity adopted by the commission is insuf-
52 ficient for the regulated utility to attract capital at reasonable
53 terms; and

54 (iv) describe with sufficient detail why the authorized common equity
55 ratio, authorized rate of return on equity, or prior rate period's aver-

age monthly rate of return on equity is insufficient for the regulated utility to maintain its financial integrity during the rate year.

(c) If the commission determines, by a preponderance of the evidence, after the conclusion of the public hearing, that the regulated utility has sufficiently demonstrated that the authorized common equity ratio, authorized rate of return on equity, or prior rate period's average monthly rate of return on equity is insufficient to meet the regulated utilities' operating needs, capital needs, or both, then the commission and the regulated utility shall then enter into settlement negotiations through adjudication pursuant to the procedures set out under this article.

5. Settlement negotiations following successful rebuttal. All settlement negotiations shall take into consideration the following factors prior to reaching a final authorized common equity ratio, authorized rate of return on equity, or prior rate period's average monthly rate of return on equity:

(a) testimonies and exhibits from expert witnesses, including those from outside public interest organizations;

(b) how the negotiated settlement reduces delivery rates for consumers;

(c) how the negotiated settlement improves equity for, minimizes impacts on, and prioritizes benefits to utility rates for disadvantaged communities as defined in section 75-0101 of the environmental conservation law;

(d) whether the testimony and exhibits of the regulated utility reflect positions that are in the best interest of the public and promote principles of equity for disadvantaged communities;

(e) whether the proposals of the regulated utility would result in the lowest possible delivery cost to the benefit of the rate payer; and

(f) whether the new settlement agreement provides a just and reasonable return for the regulated utility.

6. Reports and legislative hearing on findings between the commission and regulated utilities. (a) Annually, the commission shall submit to the governor and the legislature, a report outlining the findings and determinations of the final authorized common equity ratio, authorized rate of return on equity, and/or prior rate period's average monthly rate of return on equity, whether set through the procedures outlined in subdivisions three and four of this section or through negotiated settlements outlined in subdivision five of this section, between a regulated utility and the commission during the previous year.

(b) Such report shall analyze and describe in clear, accessible language how the final authorized common equity ratio, authorized rate of return on equity, and/or prior rate period's average monthly rate of return on equity has changed, reflects new circumstances, or remained the same during the previous year.

(c) Such report shall include all monthly data used for generic financing methodology calculations that is not publicly available data, together with an explanation of why it was necessary to use such non-public data instead of a publicly available data source.

(d) The annual report shall be published online on the commission's website and be made publicly available.

§ 3. This act shall take effect one year after it shall have become a law.