

# STATE OF NEW YORK

7294

2023-2024 Regular Sessions

## IN SENATE

May 19, 2023

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to certain penalties

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "utility penalty adjustment".

3 § 2. Subdivisions 2, 3 and 4 of section 25 of the public service law,  
4 subdivisions 3 and 4 as added by chapter 665 of the laws of 1980 and  
5 subdivision 2, paragraph (a) of subdivision 3 and paragraph (a) of  
6 subdivision 4 as amended by chapter 375 of the laws of 1986, are amended  
7 and a new subdivision 4-a is added to read as follows:

8 2. Any public utility company, corporation or person and the officers,  
9 agents and employees thereof that knowingly fails or neglects to obey or  
10 comply with a provision of this chapter or an order adopted under  
11 authority of this chapter so long as the same shall be in force, shall  
12 forfeit to the people of the state of New York a sum not exceeding [~~one~~  
13 two hundred seventy-five thousand dollars constituting a civil penalty  
14 for each and every offense and, in the case of a continuing violation,  
15 each day shall be deemed a separate and distinct offense.

16 3. Notwithstanding the provisions of subdivision two of this section,  
17 any such public utility company, corporation or person and the officers,  
18 agents and employees thereof that knowingly fails or neglects to obey or  
19 comply with a provision of this chapter, or an order or regulation  
20 adopted under the authority of this chapter, adopted specifically for  
21 the protection of human safety, including but not limited to the commis-  
22 sion's code of gas safety regulations shall, if it is determined by the  
23 commission that such safety violation caused or constituted a contribut-  
24 ing factor in bringing about a death or personal injury, forfeit to the  
25 state of New York a sum not to exceed the greater of:

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

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1 (a) [~~two~~] six hundred [~~and fifty~~] seventy-five thousand dollars  
2 constituting a civil penalty for each separate and distinct offense;  
3 provided, however, that for purposes of this paragraph each day of a  
4 continuing violation shall not be deemed a separate and distinct  
5 offense. The total period of a continuing violation, as well as every  
6 distinct violation, shall be similarly treated as a separate and  
7 distinct offense for purposes of this paragraph; or

8 (b) the maximum forfeiture determined in accordance with subdivision  
9 two of this section.

10 4. Notwithstanding the provisions of subdivision one or two of this  
11 section, a public utility company, corporation or person and the offi-  
12 cers, agents and employees thereof that knowingly fails or neglects to  
13 obey or comply with a provision of this chapter, or an order or regu-  
14 lation adopted under authority of this chapter, designed to protect the  
15 overall reliability and continuity of electric service, shall forfeit to  
16 the state of New York a sum not to exceed the greater of:

17 (a) [~~five~~] one million three hundred fifty thousand dollars constitut-  
18 ing a civil penalty for each separate and distinct offense; provided,  
19 however, that for purposes of this paragraph each day of a continuing  
20 violation shall not be deemed a separate and distinct offense. The total  
21 period of a continuing violation, as well as every distinct violation,  
22 shall be similarly treated as a separate and distinct offense for  
23 purposes of this paragraph; or

24 (b) the maximum forfeiture determined in accordance with subdivision  
25 two of this section.

26 4-a. On January first, two thousand twenty-five, and on each following  
27 January first, the penalties set forth in subdivisions two, three and  
28 four of this section shall be increased by the sum of the rate of  
29 inflation, if greater than zero, as measured by the change in the aver-  
30 age for the twelve months through June of the current year, divided by  
31 the average for the twelve months through June of the preceding year in  
32 the consumer price index.

33 § 3. Subdivisions 3, 4, 5 and 6 of section 25-a of the public service  
34 law, as added by section 2 of part X of chapter 57 of the laws of 2013,  
35 are amended and two new subdivisions 7-a and 7-b are added to read as  
36 follows:

37 3. Any combination gas and electric corporation determined by the  
38 commission to have failed to reasonably comply as shown by a preponder-  
39 ance of the evidence with a provision of this chapter, regulation or an  
40 order adopted under authority of this chapter so long as the same shall  
41 be in force shall forfeit a sum not exceeding the greater of [~~one~~] five  
42 hundred fifty thousand dollars or two one-hundredths of one percent of  
43 the annual intrastate gross operating revenue of the corporation, not  
44 including taxes paid to and revenues collected on behalf of government  
45 entities, constituting a civil penalty for each and every offense and,  
46 in the case of a continuing violation, each day shall be deemed a sepa-  
47 rate and distinct offense.

48 4. Notwithstanding the provisions of subdivision three of this  
49 section, any such combination gas and electric corporation determined by  
50 the commission to have failed to reasonably comply with a provision of  
51 this chapter, or an order or regulation adopted under the authority of  
52 this chapter specifically for the protection of human safety or  
53 prevention of significant damage to real property, including, but not  
54 limited to, the commission's code of gas safety regulations shall, if it  
55 is determined by the commission by a preponderance of the evidence that  
56 such safety violation caused or constituted a contributing factor in

1 bringing about: (a) a death or personal injury; or (b) damage to real  
2 property in excess of fifty thousand dollars, forfeit a sum not to  
3 exceed the greater of:

4 (i) [~~two~~] six hundred [~~fifty~~] seventy-five thousand dollars or three  
5 one-hundredths of one percent of the annual intrastate gross operating  
6 revenue of the corporation, not including taxes paid to and revenues  
7 collected on behalf of government entities, whichever is greater,  
8 constituting a civil penalty for each separate and distinct offense;  
9 provided, however, that for purposes of this paragraph, each day of a  
10 continuing violation shall not be deemed a separate and distinct  
11 offense. The total period of a continuing violation, as well as every  
12 distinct violation, shall be similarly treated as a separate and  
13 distinct offense for purposes of this paragraph; or

14 (ii) the maximum forfeiture determined in accordance with subdivision  
15 three of this section.

16 5. Notwithstanding the provisions of subdivision three or four of this  
17 section, a combination gas and electric corporation determined by the  
18 commission to have failed to reasonably comply by a preponderance of the  
19 evidence with a provision of this chapter, or an order or regulation  
20 adopted under authority of this chapter, designed to protect the overall  
21 reliability and continuity of electric service, including but not limit-  
22 ed to the restoration of electric service following a major outage event  
23 or emergency, shall forfeit a sum not to exceed the greater of:

24 (a) [~~five~~] one million three hundred fifty thousand dollars or four  
25 one-hundredths of one percent of the annual intrastate gross operating  
26 revenue of the corporation, not including taxes paid to and revenues  
27 collected on behalf of government entities, whichever is greater,  
28 constituting a civil penalty for each separate and distinct offense;  
29 provided, however, that for purposes of this paragraph each day of a  
30 continuing violation shall not be deemed a separate and distinct  
31 offense. The total period of a continuing violation, as well as every  
32 distinct violation shall be similarly treated as a separate and distinct  
33 offense for purposes of this paragraph; or

34 (b) the maximum forfeiture determined in accordance with subdivision  
35 three of this section.

36 6. Any officer of any combination gas and electric corporation deter-  
37 mined by the commission to have violated the provisions of subdivision  
38 three, four, or five of this section, and who knowingly violates a  
39 provision of this chapter, regulation or an order adopted under authori-  
40 ty of this chapter so long as the same shall be in force shall forfeit a  
41 sum not to exceed [~~one~~] two hundred seventy-five thousand dollars  
42 constituting a civil penalty for each and every offense and, in the case  
43 of a continuing violation, each day shall be deemed a separate and  
44 distinct offense.

45 7-a. Notwithstanding the provisions of subdivision three, four, five,  
46 or six of this section, a combination gas and electric corporation  
47 determined by the commission to have failed to satisfy its duty of  
48 candor with the public shall forfeit a sum not to exceed five hundred  
49 thousand dollars constituting a civil penalty for each and every offense  
50 and, in the case of a continuing violation, each day shall be deemed a  
51 separate and distinct offense.

52 7-b. On January first, two thousand twenty-five, and on each following  
53 January first, the penalties set forth in subdivisions three, four,  
54 five, six and seven-a of this section shall be increased by the sum of  
55 the rate of inflation, if greater than zero, as measured by the change  
56 in the average for the twelve months through June of the current year,

1 divided by the average for the twelve months through June of the preced-  
2 ing year in the consumer price index.

3 § 4. This act shall take effect on the ninetieth day after it shall  
4 have become a law.