STATE OF NEW YORK

10165

IN ASSEMBLY

May 10, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. K. Brown) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, the education law, the executive law and the public authorities law, in relation to improving public service commission oversight of the Long Island power authority; and to repeal certain provisions of the public service law relating thereto

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

Section 1. Section 3-b of the public service law is REPEALED.

§ 2. Section 5 of the public service law is amended by adding a new subdivision 7 to read as follows:

7. a. For purposes of this subdivision:

i. "Authority" means the Long Island power authority.

ii. "Service provider" means the entity under contract with the authority to provide management and operation services associated with the authority's electric transmission and distribution system and any subsidiary of such entity that provides such services under contract. However, the service provider and any affiliate of the service provider with whom the authority or service provider contracts to provide services associated with the authority's electric transmission and distribution system shall not be considered an electric corporation under this chapter.

iii. "Operations services agreement" means an agreement and any amendments thereto between the Long Island lighting company dba LIPA or the Long Island power authority and the service provider to provide management and operation services associated with the authority's electric transmission and distribution system.

b. i. In undertaking the requirements of this section, subject to subdivisions (u) and (bb) through (hh) of section one thousand twenty-f of the public authorities law, the department shall be empowered and authorized to: Review and make recommendations to the board of the Long Island power authority with respect to the rates and charges, including

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

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charges related to energy efficiency and renewable energy programs, to be established by the authority and become applicable on or after January first, two thousand sixteen pursuant to subdivision (u) of section one thousand twenty-f of the public authorities law.

ii. The purpose of such review is to make recommendations designed to ensure that the authority and the service provider provide safe and adequate transmission and distribution service at rates set at the lowest level consistent with sound fiscal operating practices.

iii. The department's recommendations shall be designed to be consistent with ensuring that the revenue requirements related to such rate review are sufficient to satisfy the authority's obligations with respect to its bonds, notes and all other contracts.

iv. In the context of such review, the department may make recommendations with regard to the compensation or fee structure included within the operations services agreement.

v. In undertaking such review and in making recommendations related to the proposed rates and charges, the department shall establish standards, policies and procedures that, at a minimum, provide for public statement and evidentiary hearings and participation of intervenors and other parties, and ensure that any final recommendations related to the proposed rates and charges are provided to the authority within two hundred forty days of the filing with the department of such plan.

vi. The parties to any such rate review proceeding shall include, but not be limited to, department staff, the authority, the service provider and, to the extent it deems necessary or appropriate, the utility intervention unit.

c. Review the annual capital expenditures proposed by the service provider and recommend such improvement in the manufacture, conveying, transportation, distribution or supply of electricity, or in the methods employed by the service provider as in the department's judgment allows for safe and adequate service.

d. Annually review the emergency response plan of the authority and the service provider in accordance with the following requirements:

i. Examine and determine whether the emergency response plan is consistent with the requirements of paragraph (a) of subdivision twenty-one of section sixty-six of this chapter and any regulations or orders promulgated thereto, and to recommend amendments of same; and

ii. Review and make recommendations to the authority with respect to the performance of the service provider in restoring service or otherwise meeting the requirements of the emergency response plan during an emergency event, defined for purposes of this section as an event where widespread outages have occurred in the authority's service territory due to a storm or other causes beyond the control of the authority and its service provider, including making determinations with respect to whether the service provider is reasonably able to implement the emergency response plan, whether the length of any outages related to such emergency were materially longer than they would otherwise have been because the service provider failed to reasonably implement the emergency response plan, the reasonableness of costs associated with such emergency response, the costs, if any, that were unreasonably and imprudently incurred by the service provider, and whether the service provider would be liable for any such costs pursuant to the terms and conditions of the operations services agreement.

e. Upon notification to the Long Island power authority, undertake a comprehensive and regular management and operations audit of the authority and service provider pursuant to subdivision (bb) of section one

thousand twenty-f of the public authorities law. The department shall have discretion to have such an audit performed by its staff, or by an independent contractor. In every case in which an audit is required pursuant to subdivision (bb) of section one thousand twenty-f of the public authorities law performed by an independent auditor, the department shall have the authority to select the auditor, and to require the authority to enter into a contract with the auditor that is consistent with the contracting-related requirements specified in subdivision nineteen of section sixty-six of this chapter and the requirements of subdivision (bb) of section one thousand twenty-f of the public authorities law. Such contract shall provide further that the auditor shall work for and under the direction of the department according to such terms as the department may determine are necessary and reasonable.

f. Accept, investigate, mediate to resolve and make recommendations to the Long Island power authority and/or the service provider regarding the resolution of complaints from consumers in the authority's service territory relating to, among other things, the provision of electric service provided by the service provider and/or the authority.

g. Review the net metering program implemented under subdivision (h) of section one thousand twenty-g of the public authorities law and make recommendations designed to ensure consistency with the requirements of sections sixty-six-j and sixty-six-l of this chapter, and any regulations and orders adopted thereto.

h. Review and make recommendations with respect to any proposed plan submitted by the Long Island power authority and/or the service provider related to implementation of energy efficiency measures, distributed generation or advanced grid technology programs having the purpose of providing customers with tools to more efficiently and effectively manage their energy usage and utility bills, and improving system reliability and power quality.

i. Review the data, information and reports submitted pursuant to subdivision (hh) of section one thousand twenty-f of the public authorities law and other pertinent information related to the metrics in the operations services agreement, the Long Island power authority's evaluation of such data, information and reports, and make recommendations to the authority with respect to the service provider's annual incentive-based compensation within thirty days of receipt of such evaluation and information.

j. To undertake the requirements of this subdivision, the department shall be authorized to inspect all premises and facilities owned or operated by the authority and the service provider, review all books and records of the authority and the service provider, interview all appropriate personnel, and require annual reporting consistent with the requirements of subdivision six of section sixty-six of this chapter and any regulations and orders adopted thereto; provided, however, that this authority shall not extend to affiliates of the service provider.

§ 3. Subdivision l of section 7208 of the education law, as amended by section 15 of part A of chapter 173 of the laws of 2013, is amended to read as follows:

l. The practice of engineering or land surveying, or using the title "engineer" or "surveyor" (i) exclusively as an officer or employee of a public service corporation by rendering to such corporation such services in connection with its lines and property which are subject to supervision with respect to the safety and security thereof by the public service commission of this state, the interstate commerce commission or other federal regulatory body and so long as such person is thus

actually and exclusively employed and no longer, or (ii) exclusively as an officer or employee of the Long Island power authority or its service provider, as defined under **subdivision seven of** section [~~three-b~~] **five** of the public service law, by rendering to such authority or provider such services in connection with its lines and property which are located in such authority's service area and so long as such person is thus actually and exclusively employed and no longer;

§ 4. Subparagraph (i) of paragraph (b) of subdivision 4 of section 94-a of the executive law, as amended by section 12 of part A of chapter 173 of the laws of 2013, is amended to read as follows:

(i) on behalf of the secretary, initiate, intervene in, or participate in any proceedings before the public service commission or the department of public service, to the extent authorized by [~~sections three-b,~~] **subdivision seven of section five or section** twenty-four-a, seventy-one, eighty-four or ninety-six of the public service law or any other applicable provision of law, where [~~he or she~~] **such secretary** deems such initiation, intervention or participation to be necessary or appropriate;

§ 5. Paragraph 1 of subdivision (bb) and subdivisions (ee) and (ff) of section 1020-f of the public authorities law, paragraph 1 of subdivision (bb) as amended and subdivisions (ee) and (ff) as added by section 7 of part A of chapter 173 of the laws of 2013, are amended to read as follows:

1. The authority and the service provider shall cooperate in the undertaking and completion of a regular and comprehensive management and operations audit conducted pursuant to the requirements of this subdivision and paragraph [~~(d)~~] **e** of subdivision [~~three~~] **seven** of section [~~three-b~~] **five** of the public service law. Such audit shall review and evaluate the overall operations and management of the authority and service provider, including such operations and management in the context of the authority's duty to set rates at the lowest level consistent with standards and procedures provided in subdivision (u) of this section, and include, but not be limited to: (i) the service provider's construction and capital program planning in relation to the needs of customers for reliable service; (ii) the overall efficiency of the authority's and service provider's operations; (iii) the manner in which the authority is meeting its debt service obligations; (iv) the authority's Fuel and Purchased Power Cost Adjustment clause and recovery of costs associated with such clause; (v) the authority's and service provider's annual budgeting procedures and process; (vi) the application, if any, of the performance metrics designated in the operations services agreement and the accuracy of the data relied upon with respect to such application; and (vii) the authority's compliance with debt covenants.

(ee) On or before July first, two thousand fourteen, and annually thereafter, to submit for review to the department of public service any proposed plan related to implementing energy efficiency measures, distributed generation or advanced grid technology programs for the purpose provided pursuant to paragraph [~~(g)~~] **h** of subdivision [~~three~~] **seven** of section [~~three-b~~] **five** of the public service law.

(ff) To assist and cooperate with the department of public service with respect to any review undertaken pursuant to **subdivision seven of** section [~~three-b~~] **five** of the public service law, including providing the department with reasonable access to all facilities and premises owned or operated by the authority or its service provider, allowing review of all books and records of the authority and its service provid-

er, providing copies of requested documents, allowing interviews of all appropriate personnel, and responding in a reasonable and timely manner to any inquiries or reporting requests made by the department; provided, however, that the obligations set forth in this subdivision shall not extend to affiliates of the service provider.

§ 6. Subdivision 1 of section 1020-s of the public authorities law, as amended by chapter 681 of the laws of 2021, is amended to read as follows:

1. The rates, services and practices relating to the electricity generated by facilities owned or operated by the authority shall not be subject to the provisions of the public service law or to regulation by, or the jurisdiction of, the public service commission, except to the extent (a) article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined therein, (b) article ten of such law applies to the siting of a generating facility as defined therein, (c) section eighteen-a of such law provides for assessment for certain costs, property or operations, (d) to the extent that the department of public service reviews and makes recommendations with respect to the operations and provision of services of, and rates and budgets established by, the authority pursuant to **subdivision seven of** section [~~three-b~~] **five** of such law, (e) that section seventy-four of the public service law applies to qualified energy storage systems within the authority's jurisdiction, and (f) that section seventy-four-b of the public service law applies to Long Island community choice aggregation programs.

§ 7. Subdivision 1-a of section 18-a of the public service law, as added by section 2 of part A of chapter 173 of the laws of 2013, is amended to read as follows:

1-a. All costs and expenses of the department related to the department's responsibilities under **subdivision seven of** section [~~three-b~~] **five** of this chapter shall be paid pursuant to appropriation on the certification of the [~~chairman~~] **chairperson** of the department and upon the audit and warrant of the comptroller. For the state fiscal year beginning on April first, two thousand fourteen and each state fiscal year thereafter, payments are to be made from all moneys collected from the Long Island power authority pursuant to this section. The total of such costs and expenses shall be assessed on such authority in the manner provided in subdivisions two, three and four of this section.

§ 8. This act shall take effect immediately.