

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.

LBD10392-03-3

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.