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:

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

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

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

3. Notwithstanding the provisions of subdivision two of this section, any such public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under the authority of this chapter, adopted specifically for the protection of human safety, including but not limited to the commission's code of gas safety regulations shall, if it is determined by the commission that such safety violation caused or constituted a contributing factor in bringing about a death or personal injury, forfeit to the 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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(a) [~~two~~] **six** hundred [~~and fifty~~] **seventy-five** thousand dollars constituting a civil penalty for each separate and distinct offense; provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or

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

4. Notwithstanding the provisions of subdivision one or two of this section, a public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the overall reliability and continuity of electric service, shall forfeit to the state of New York a sum not to exceed the greater of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

divided by the average for the twelve months through June of the preceding year in the consumer price index.

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