

STATE OF NEW YORK

1028

2025-2026 Regular Sessions

IN ASSEMBLY

January 8, 2025

Introduced by M. of A. BARRETT, KELLES, LEVENBERG, JACOBSON -- read once and referred to the Committee on Energy

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

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

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

3 § 65-c. Setting a rate of return on equity and common equity ratio. 1.
4 Definitions. For the purposes of this section, the following terms shall
5 have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (c) The promulgated generic financing methodology, authorized common
56 equity ratio, authorized rate of return on equity, and prior rate peri-

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

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

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

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

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

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

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

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

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

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

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

52 (iv) describe with sufficient detail why the authorized common equity
53 ratio, authorized rate of return on equity, or prior rate period's aver-
54 age monthly rate of return on equity is insufficient for the regulated
55 utility to maintain its financial integrity during the rate year.

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

10 5. Settlement negotiations following successful rebuttal. All settle-
11 ment negotiations shall take into consideration the following factors
12 prior to reaching a final authorized common equity ratio, authorized
13 rate of return on equity, or prior rate period's average monthly rate of
14 return on equity:

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

17 (b) how the negotiated settlement reduces delivery rates for consum-
18 ers;

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

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

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

28 (f) whether the new settlement agreement provides a just and reason-
29 able return for the regulated utility.

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

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

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

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

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