STATE OF NEW YORK

11463

IN ASSEMBLY

May 20, 2026

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

AN ACT to amend the public service law, in relation to allowing issues before the public service commission to be determined publicly rather than through settlement discussions not open to the public

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

Section 1. Section 66 of the public service law is amended by adding a new subdivision 33 to read as follows:

33. (a) In any rate proceeding, any party may seek to sever from consideration in the settlement process or inclusion in any joint proposal any substantive issue that it discussed in its direct testimony through a motion to the presiding administrative law judge that is filed no later than ten days after the last permitted date for the filing of reply testimony by parties. Such motion shall indicate the substantive issue or issues for which the moving party seeks severance and the related page numbers in the moving party's testimony. Parties may file responsive motions within ten days supporting or challenging the moving party's assertion that it developed the identified substantive issue or issues in its direct testimony. The presiding administrative law judge shall issue a written ruling within fifteen days after the filing of responses that provides the reasons for concluding that the moving party did or did not provide a substantive issue or substantive issues in its testimony. The moving party may appeal the administrative law judge's decision to the commission through a request for interlocutory review pursuant to the department's rules.

(b) Upon the granting of the motion by the administrative law judge, or of the request for interlocutory review by the commission, the identified substantive issue or issues may be discussed in settlement negotiations during the first sixty days after the formal commencement of settlement negotiations. After sixty days have elapsed, disposition of the substantive issues or issues shall be subject to the litigation process only unless the moving party advises the parties, administrative

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

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law judge, and commission in writing that it waives its right to sever the identified substantive issue or issues from the settlement process and agrees to allow discussion of such issues in settlement negotiations and potential inclusion in a joint proposal. Waiving the right to sever does not preclude the moving party from objecting to any provision included in a filed joint proposal.

(c) As used in this subdivision, the following terms shall have the following meanings:

(i) "Joint proposal" shall mean a negotiated settlement agreement signed by two or more parties in a rate proceeding.

(ii) "Interlocutory review" shall mean a motion to the commission requesting review of a ruling by an administrative law judge.

(iii) The "moving party" shall mean the party who seeks severance of an issue or issues under this subdivision.

(iv) "Party" shall mean any party to a commission rate proceeding other than the department or the utility.

(v) "Settlement process" shall mean a set of formal negotiations of the parties organized by the department that is intended to resolve all or some of the issues in any rate proceeding and lead to a joint proposal.

(vi) "Substantive issue" shall mean an issue in which testimony by a moving party contains allegations of facts or law, which, after further development through the litigation process, including evidentiary hearings, interrogatories or discovery, may be material to the resolution of the issue in the recommended decision or final order. The intent of this definition is to permit any allegation of fact with any evidentiary support or legal claim to meet this standard; where the issue concerns at least in part a factual allegation, only conclusory assertions of fact without any evidentiary support in the moving party's testimony are not substantive.

§ 2. Section 80 of the public service law is amended by adding a new subdivision 13 to read as follows:

13. (a) In any rate proceeding, any party may seek to sever from consideration in the settlement process or inclusion in any joint proposal any substantive issue that it discussed in its direct testimony through a motion to the presiding administrative law judge that is filed no later than ten days after the last permitted date for the filing of reply testimony by parties. Such motion shall indicate the substantive issue or issues for which the moving party seeks severance and the related page numbers in the moving party's testimony. Parties may file responsive motions within ten days supporting or challenging the moving party's assertion that it developed the identified substantive issue or issues in its direct testimony. The presiding administrative law judge shall issue a written ruling within fifteen days after the filing of responses that provides the reasons for concluding that the moving party did or did not provide a substantive issue or substantive issues in its testimony. The moving party may appeal the administrative law judge's decision to the commission through a request for interlocutory review pursuant to the department's rules.

(b) Upon the granting of the motion by the administrative law judge, or of the request for interlocutory review by the commission, the identified substantive issue or issues may be discussed in settlement negotiations during the first sixty days after the formal commencement of settlement negotiations. After sixty days have elapsed, disposition of the substantive issues or issues shall be subject to the litigation process only unless the moving party advises the parties, administrative

law judge, and commission in writing that it waives its right to sever the identified substantive issue or issues from the settlement process and agrees to allow discussion of such issues in settlement negotiations and potential inclusion in a joint proposal. Waiving the right to sever does not preclude the moving party from objecting to any provision included in a filed joint proposal.

(c) As used in this subdivision, the following terms shall have the following meanings:

(i) "Joint proposal" shall mean a negotiated settlement agreement signed by two or more parties in a rate proceeding.

(ii) "Interlocutory review" shall mean a motion to the commission requesting review of a ruling by an administrative law judge.

(iii) The "moving party" shall mean the party who seeks severance of an issue or issues under this subdivision.

(iv) "Party" shall mean any party to a commission rate proceeding other than the department or the utility.

(v) "Settlement process" shall mean a set of formal negotiations of the parties organized by the department that is intended to resolve all or some of the issues in any rate proceeding and lead to a joint proposal.

(vi) "Substantive issue" shall mean an issue in which testimony by a moving party contains allegations of facts or law, which, after further development through the litigation process, including evidentiary hearings, interrogatories or discovery, may be material to the resolution of the issue in the recommended decision or final order. The intent of this definition is to permit any allegation of fact with any evidentiary support or legal claim to meet this standard; where the issue concerns at least in part a factual allegation, only conclusory assertions of fact without any evidentiary support in the moving party's testimony are not substantive.

§ 3. Section 89-c of the public service law is amended by adding a new subdivision 18 to read as follows:

18. (a) In any rate proceeding, any party may seek to sever from consideration in the settlement process or inclusion in any joint proposal any substantive issue that it discussed in its direct testimony through a motion to the presiding administrative law judge that is filed no later than ten days after the last permitted date for the filing of reply testimony by parties. Such motion shall indicate the substantive issue or issues for which the moving party seeks severance and the related page numbers in the moving party's testimony. Parties may file responsive motions within ten days supporting or challenging the moving party's assertion that it developed the identified substantive issue or issues in its direct testimony. The presiding administrative law judge shall issue a written ruling within fifteen days after the filing of responses that provides the reasons for concluding that the moving party did or did not provide a substantive issue or substantive issues in its testimony. The moving party may appeal the administrative law judge's decision to the commission through a request for interlocutory review pursuant to the department's rules.

(b) Upon the granting of the motion by the administrative law judge, or of the request for interlocutory review by the commission, the identified substantive issue or issues may be discussed in settlement negotiations during the first sixty days after the formal commencement of settlement negotiations. After sixty days have elapsed, disposition of the substantive issues or issues shall be subject to the litigation process only unless the moving party advises the parties, administrative

law judge, and commission in writing that it waives its right to sever the identified substantive issue or issues from the settlement process and agrees to allow discussion of such issues in settlement negotiations and potential inclusion in a joint proposal. Waiving the right to sever does not preclude the moving party from objecting to any provision included in a filed joint proposal.

(c) As used in this subdivision, the following terms shall have the following meanings:

(i) "Joint proposal" shall mean a negotiated settlement agreement signed by two or more parties in a rate proceeding.

(ii) "Interlocutory review" shall mean a motion to the commission requesting review of a ruling by an administrative law judge.

(iii) The "moving party" shall mean the party who seeks severance of an issue or issues under this subdivision.

(iv) "Party" shall mean any party to a commission rate proceeding other than the department or the utility.

(v) "Settlement process" shall mean a set of formal negotiations of the parties organized by the department that is intended to resolve all or some of the issues in any rate proceeding and lead to a joint proposal.

(vi) "Substantive issue" shall mean an issue in which testimony by a moving party contains allegations of facts or law, which, after further development through the litigation process, including evidentiary hearings, interrogatories or discovery, may be material to the resolution of the issue in the recommended decision or final order. The intent of this definition is to permit any allegation of fact with any evidentiary support or legal claim to meet this standard; where the issue concerns at least in part a factual allegation, only conclusory assertions of fact without any evidentiary support in the moving party's testimony are not substantive.

§ 4. This act shall take effect on the one hundred twentieth day after it shall have become a law, and shall apply to public service commission proceedings initiated on or after such date. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.