STATE OF NEW YORK

5593

2025-2026 Regular Sessions

IN SENATE

February 25, 2025

Introduced by Sen. MAYER -- 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 periods suspending the operation of certain rate, charge or other changes by utilities, and provisions permitting utilities to retroactively recover revenues they would have earned during such periods

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

Section 1. Legislative intent. The legislature finds and declares that:

1. In recent years, the proposed delivery rate increases and the ones authorized by the public service commission have grown progressively larger. Escalating utility costs have caused a significant financial strain and has left approximately 1.5 million residential households and thousands of businesses at risk of having their utility services shut off. Concurrently, the consistent trend of utilities achieving unprecedented profits jeopardizes the well-being of countless New Yorkers struggling to cover their utility expenses.

2. It has become common for the resolution of rate cases to occur long after the statutory eleven-month suspension period, primarily due to prolonged settlement negotiations. When these delays occur, utilities often request, and the commission routinely approves, suspension extensions paired with "make whole" provisions, which allow the utility to retroactively recover revenues based on the new rates that would have otherwise been applied during the suspension period. Such retroactive rate increases often result in "rate compression", where consumers are required to fund annual or multi-year rate increases over shorter periods of time, leading to larger, unexpected bills that can be particularly burdensome for households and businesses grappling with an already significant rate increase.

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

LBD09031-01-5

3. While "make whole" agreements can be symmetrical, applying to both rate increases and decreases, it is observed that in practice, these agreements predominately manifest in the context of rate increases. Utilities currently hold undue power over the initiation and duration of the rate case settlement process, yet bear minimal risk associated with delays to the eleven-month suspension period. Utilities initiate settlement negotiations, play a major role in the timing of meetings and the exchanges of offers, and, because the commission lacks the authority to impose multi-year rate plans on utilities, negotiations on such plans currently cannot end successfully unless and until the utility is satisfied with the rate relief provided. Conversely, captive ratepayers disproportionately shoulder the liabilities associated with prolonged settlement negotiations and the resultant rate compression. This prevalent trend, where the majority of rate cases result in increases rather than decreases, highlights an inherent imbalance in the negotiation power between large utility corporations and individual consumers. Such imbalance is a matter of serious concern and underscores the necessity for legislative intervention.

§ 2. Paragraph (f) of subdivision 12 of section 66 of the public service law, as amended by chapter 154 of the laws of 1989, is amended to read as follows:

(f) Whenever there shall be filed with the commission by any utility any schedule stating a new rate or charge, or any change in any form of contract or agreement or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, the commission may, at any time within sixty days from the date when such schedule would or has become effective, either upon complaint or upon its own initiative, and, if it so orders, without answer or other formal pleading by the utility, but upon reasonable notice, hold a hearing concerning the propriety of a change proposed by the filing. If such change is a major change, the commission shall hold such a hearing. Pending such hearing and decision thereon, the commission, upon filing with such schedule and delivering to the utility, a statement in writing of its reasons therefor, may suspend the operation of such schedule, but not for a longer period than one hundred and twenty days beyond the time when it would otherwise go into effect. After full hearing, whether completed before or after the schedule goes into effect, the commission may make such order in reference thereto as would be proper in a proceeding begun after the rate, charge, form of contract or agreement, rule, regulation, service, general privilege or facility had become effective. If any such hearing cannot be concluded within the period of suspension as above stated, the commission may extend the suspension for a further period, not exceeding [~~six~~] **nine** months. **Notwithstanding any inconsistent provision of this paragraph, any subsequent requests for an extension of the suspension period shall require approval by the commission and shall be valid for a period of one month, after which the commission shall review and order upon the necessity of a further extension. In its determination to approve, modify, or deny an extension of the suspension period, the commission shall consider the length of time the rate case has already been under suspension, any previous extensions granted, and the financial impacts such extension would have on customers.**

§ 3. The public service law is amended by adding a new section 66-z to read as follows:

§ 66-z. Granting of make whole provisions. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Regulated utility" means an electric corporation, gas corporation, or combination gas and electric corporation as defined in section two of this chapter.

(b) "Suspension period" means the designated timeframe during which the implementation of a proposed utility rate, charge, or related change is temporarily halted by the commission, pursuant to paragraph (f) of subdivision twelve of section sixty-six of this article.

(c) "Hearing" means a formal proceeding conducted by the commission, initiated either upon complaint or at its own discretion, to examine and determine the appropriateness of proposed changes in rates, charges, contracts, agreements, rules, regulations, services, or general privileges or facilities by a utility, as outlined in paragraph (f) of subdivision twelve of section sixty-six of this article.

(d) "Make whole provision" means an arrangement in utility rate regulation that permits a utility to retroactively recover revenues it would have earned if new rates had been applied during a suspension period.

(e) "Rate compression" means the phenomenon where customers are charged higher rates in a condensed timeframe to compensate for retroactive rate adjustments, often due to the application of a make whole provision.

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

2. Limitations on retroactive rate recovery. (a) To alleviate the impact of rate compression on all customers, the following limitations on make whole provisions are hereby established for any period beyond the initial suspension period. The percentage limit applied shall extend uniformly to the entirety of the extended suspension period.

(i) For the first two months beyond the initial suspension period prior to a hearing, a utility may recover up to ninety percent of the additional revenues it would have collected had the new rates been effective during the rate period.

(ii) For the third month, a utility may recover up to seventy percent of the additional revenues it would have collected had the new rates been effective during the rate period.

(iii) For the fourth month, a utility may recover up to thirty percent of the additional revenues it would have collected had the new rates been effective during the rate period.

(iv) For the fifth month and any subsequent months, a utility shall not recover any additional revenues for the rate periods.

(b) In instances where a make whole provision is granted by the commission, a utility shall not seek to recover, in any future rate filings or through any other financial mechanism or strategy, any revenues not recovered due to the limitations specified in paragraph (a) of this subdivision, nor shall any interest or carrying charges be imposed on any deferred recovery granted under a make whole provision.

(c) In the absence of a multi-year rate period, any allowable recovery under a make whole provision, as limited by this section, shall be deferred as determined by the commission, provided however that such recovery shall occur over a period specified by the commission within the following two fiscal years and shall not include any additional costs or interest charges to customers.

§ 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This act shall take effect one year after it shall have become a law.