

STATE OF NEW YORK

9967

IN SENATE

April 20, 2026

Introduced by Sen. COMRIE -- 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 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:

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

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

20 (b) Upon the granting of the motion by the administrative law judge,
21 or of the request for interlocutory review by the commission, the iden-
22 tified substantive issue or issues may be discussed in settlement nego-
23 tiations during the first sixty days after the formal commencement of
24 settlement negotiations. After sixty days have elapsed, disposition of
25 the substantive issues or issues shall be subject to the litigation
26 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.

LBD15291-01-6

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

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

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

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

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

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

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

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

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

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

50 (b) Upon the granting of the motion by the administrative law judge,
51 or of the request for interlocutory review by the commission, the iden-
52 tified substantive issue or issues may be discussed in settlement nego-
53 tiations during the first sixty days after the formal commencement of
54 settlement negotiations. After sixty days have elapsed, disposition of
55 the substantive issues or issues shall be subject to the litigation
56 process only unless the moving party advises the parties, administrative

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

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

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

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

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

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

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

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

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

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

50 (b) Upon the granting of the motion by the administrative law judge,
51 or of the request for interlocutory review by the commission, the iden-
52 tified substantive issue or issues may be discussed in settlement nego-
53 tiations during the first sixty days after the formal commencement of
54 settlement negotiations. After sixty days have elapsed, disposition of
55 the substantive issues or issues shall be subject to the litigation
56 process only unless the moving party advises the parties, administrative

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

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

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

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

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

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

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

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

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