

23

PART O

24 Section 1. Sections 24 and 25 of the public service law are REPEALED

25 and a new section 24 is added to read as follows:

1 § 24. Administrative sanctions; recovery of penalties. 1. Every public
2 utility company, corporation or person and the officers, agents and
3 employees thereof shall adhere to every provision of this chapter and
4 every order or regulation adopted under authority of this chapter so
5 long as the same shall be in force.

6 2. (a) The commission shall have the authority to assess a civil
7 penalty against a public utility company, corporation, or person and the
8 officers, agents and employees thereof subject to the jurisdiction,
9 supervision, or regulation pursuant to this chapter in an amount as set
10 forth in this section. In determining the amount of any penalty to be
11 assessed pursuant to this section, the commission shall consider: (i)
12 the seriousness of the violation for which a penalty is sought; (ii) the
13 nature and extent of any previous violations for which penalties have
14 been assessed against the public utility company, corporation or person;
15 (iii) the gross revenues and financial status of the public utility
16 company, corporation or person; and (iv) such other factors as the
17 commission may deem appropriate and relevant. The remedies provided by
18 this subdivision are in addition to any other remedies provided in law.

19 (b) Whenever the commission has reason to believe that a public utili-
20 ty company, corporation or person and such officers, agents and employ-
21 ees thereof may be subject to imposition of a civil penalty as set forth
22 in this subdivision, it shall notify such public utility company, corpo-
23 ration or person. Such notice shall include, but shall not be limited to
24 (i) the date and a brief description of the facts and nature of each act
25 or failure to act for which such penalty is proposed; (ii) a list of
26 each statute, regulation or order that the commission alleges has been
27 violated; (iii) the amount of each penalty that the commission proposes
28 to assess; and (iv) the option to request a hearing to demonstrate why

1 the proposed penalty or penalties should not be assessed against such
2 public utility company, corporation, or such person.

3 3. Any public utility company or corporation that violates a provision
4 of this chapter, regulation or an order adopted under authority of this
5 chapter so long as the same shall be in force, or who fails to provide
6 safe and adequate service shall forfeit a sum not exceeding the greater
7 of one hundred thousand dollars or two one-hundredths of one percent of
8 the annual intrastate gross operating revenue of the utility, constitut-
9 ing a civil penalty for each and every offense and, in the case of a
10 continuing violation, each day shall be deemed a separate and distinct
11 offense.

12 4. Notwithstanding the provisions of subdivision three of this
13 section, any such public utility company or corporation that violates a
14 provision of this chapter, or an order or regulation adopted under the
15 authority of this chapter specifically for the protection of human safe-
16 ty or prevention of significant damage to real property, including, but
17 not limited to, the commission's code of gas safety regulations shall,
18 if it is determined by the commission that such safety violation caused
19 or constituted a contributing factor in bringing about: (a) a death or
20 personal injury; or (b) damage to real property in excess of fifty thou-
21 sand dollars, forfeit a sum not to exceed the greater of:

22 (i) two hundred fifty thousand dollars or three one-hundredths of one
23 percent of the annual intrastate gross operating revenue of the utility,
24 whichever is greater, constituting a civil penalty for each separate and
25 distinct offense; provided, however, that for purposes of this para-
26 graph, each day of a continuing violation shall not be deemed a separate
27 and distinct offense. The total period of a continuing violation, as

1 well as every distinct violation, shall be similarly treated as a sepa-
2 rate and distinct offense for purposes of this paragraph; or

3 ~~(iii) the maximum forfeiture determined in accordance with subdivision~~
4 three of this section.

5 5. Notwithstanding the provisions of subdivision three or four of this
6 section, a public utility company or corporation that violates a
7 provision of this chapter, or an order or regulation adopted under
8 authority of this chapter, designed to protect the overall reliability
9 and continuity of electric service, including but not limited to the
10 restoration of electric service following a major outage event or emer-
11 gency, shall forfeit a sum not to exceed the greater of:

12 (a) five hundred thousand dollars or four one-hundredths of one
13 percent of the annual intrastate gross operating revenue of the utility,
14 whichever is greater, constituting a civil penalty for each separate and
15 distinct offense; provided, however, that for purposes of this paragraph
16 each day of a continuing violation shall not be deemed a separate and
17 distinct offense. The total period of a continuing violation, as well as
18 every distinct violation shall be similarly treated as a separate and
19 distinct offense for purposes of this paragraph; or

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

22 6. Any officer, agent, or employee of any corporation determined by
23 the commission to have violated the provisions of subdivision three,
24 four, or five of this section, and who knowingly violates a provision of
25 this chapter, regulation or an order adopted under authority of this
26 chapter so long as the same shall be in force, including a failure to
27 provide safe and adequate service, shall forfeit a sum not to exceed one
28 hundred thousand dollars constituting a civil penalty for each and every

1 offense and, in the case of a continuing violation, each day shall be
2 deemed a separate and distinct offense.

3 7. Any such assessment may be compromised or discontinued by the
4 commission. All moneys recovered pursuant to this section, together with
5 the costs thereof, shall be remitted to, or for the benefit of, the
6 ratepayers in a manner to be determined by the commission.

7 8. Upon a failure by a public utility company, corporation, or person
8 to remit any penalty assessed by the commission pursuant to this
9 section, the commission, through its counsel, may institute an action or
10 special proceeding to collect the penalty in a court of competent juris-
11 diction.

12 9. Any payment made by a public utility company, corporation or person
13 and the officers, agents and employees thereof as a result of an assess-
14 ment as provided in this section, and the cost of litigation and inves-
15 tigation related to any such assessment, shall not be recoverable from
16 ratepayers.

17 10. In construing and enforcing the provisions of this chapter relat-
18 ing to penalties, the act of any director, officer, agent or employee of
19 a public utility company, corporation or person acting within the scope
20 of his or her official duties or employment shall be deemed to be the
21 act of such public utility company or corporation.

22 § 2. Section 26 of the public service law is renumbered section 25 .

23 § 3. Section 65 of the public service law is amended by adding two new
24 subdivisions 14 and 15 to read as follows:

25 14. In conjunction with a management and operations audit undertaken
26 pursuant to subdivision nineteen of section sixty-six of this article or
27 upon its own motion, the commission shall review the capability, includ-
28 ing but not limited to, the capability to implement emergency response

1 plans and restoration, of each gas corporation and electric corporation
2 to provide safe, adequate, and reliable service. Upon good cause shown,
3 the commission may direct such corporation to comply with additional and
4 more stringent terms and conditions of service than existed prior to the
5 commencement of the management and operations audit, or cause such
6 corporation to divest some or all of its state-based utility assets,
7 including franchise territories, based upon standards and procedures
8 established by the commission to ensure continuity of safe and adequate
9 service, due process, and fair and just compensation; provided, however,
10 that nothing in this subdivision limits the commission's authority to
11 undertake the actions set forth pursuant to sections twenty-four and
12 twenty-five of this chapter. In the case where the commission directs a
13 full or partial divestment of a corporation'S assets, the commission
14 shall first proceed in such manner as to facilitate the voluntary trans-
15 fer of such assets.

16 15. The chief executive officer of each gas corporation and electric
17 corporation shall certify to the commission on or before March fifteenth
18 of each year that such corporation is in compliance with the require-
19 ments of this chapter and any rules, regulations, orders and procedures
20 adopted thereto, including the obligation that such corporation provide
21 safe and adequate service.

22 § 4. Subdivisions 19 and 21 of section 66 of the public service law,
23 subdivision 19 as added by chapter 556 of the laws of 1976 and the clos-
24 ing paragraph as added by chapter 586 of the laws of 1986 and subdivi-
25 sion 21 as added by chapter 718 of the laws of 1980, are amended and a
26 new subdivision 1-a is added to read as follows:

27 1-a. Review the annual capital expenditure of each gas or electric
28 corporation and may order such improvement in the manufacture, convey-

1 ing, transportation, distribution or supply of gas, in the manufacture,
2 transmission or supply of electricity, or in the methods employed by
3 such corporation as in the commission's judgment is adequate, just and
4 reasonable.

5 19. (a) The commission shall have power to provide for management and
6 operations audits of gas corporations and electric corporations. Such
7 audits shall be performed at least once every five years for combination
8 gas and electric companies, as well as for straight gas corporations
9 having annual gross revenues in excess of two hundred million dollars.
10 The audit shall include, but not be limited to, an investigation of the
11 company's construction program planning in relation to the needs of its
12 customers for reliable service [and], an evaluation of the efficiency of
13 the company's operations, recommendations with respect to same, and the
14 timing with respect to the implementation of such recommendations. The
15 commission shall have discretion to have such audits performed by its
16 staff, or by independent auditors.

17 In every case in which the commission chooses to have the audit
18 provided for in this subdivision or pursuant to subdivision fourteen of
19 section sixty-five of this article performed by independent auditors, it
20 shall have authority to select the auditors, and to require the company
21 being audited to enter into a contract with the auditors providing for
22 their payment by the company. Such contract shall provide further that
23 the auditors shall work for and under the direction of the commission
24 according to such terms as the commission may determine are necessary
25 and reasonable.

26 [The commission shall have authority to direct the company to imple-
27 ment any recommendations resulting from such audits that it finds to be
28 necessary and reasonable.]

1 {bl Each gas and electric corporation subject to an audit under this
2 subdivision shall file a report with the commission within thirty days
3 after issuance of such audit detailing its plan to implement the recom-
4 mendations made in the audit. After review of such plan, the commission
5 may require that such corporation amend the plan in a particular manner.
6 Such plan shall thereafter become enforceable upon approval by the
7 commission. The commission shall have power to commence a proceeding to
8 examine any such corporation's compliance with the recommendations of
9 such audit.

10 (c) Upon the application of a gas or electric corporation for a major
11 change in rates as defined in subdivision twelve of this section, the
12 commission shall review that corporation's compliance with the
13 directions and recommendations made previously by the commission, as a
14 result of the most recently completed management and operations audit.
15 The commission shall incorporate the findings of such review in its
16 opinion or order, and such findings shall be enforceable by the commis-
17 sion.

18 21. [The commission shall require every electric corporation to submit
19 storm plans to the commission for review and approval at such times and
20 in such detail and form as the commission shall require, provided,
21 however, that the same shall be filed at least annually.] {al Each elec-
22 tric corporation shall annually, on or before December fifteenth, submit
23 to the commission an emergency response plan for review and approval.
24 The emergency response plan shall be designed for the reasonably prompt
25 restoration of service in the case of an emergency event, defined for
26 purposes of this subdivision as an event where widespread outages have
27 occurred in the service territory of the company due to storms or other
28 causes beyond the control of the company. The emergency response plan

1 shall include, but shall not be limited to, the following: (i) the iden-
2 tification of management staff responsible for company operations during
3 an emergency; (ii) a communications system with customers during an
4 emergency that extends beyond normal business hours and business condi-
5 tions; (iii) identification of and outreach plans to customers who had
6 documented their need for essential electricity for medical needs; (iv)
7 identification of and outreach plans to customers who had documented
8 their need for essential electricity to provide critical telecommuni-
9 cations, critical transportation and critical fuel distribution
10 services; (v) designation of company staff to communicate with local
11 officials and appropriate regulatory agencies; (vi) provisions regarding
12 how the company will assure the safety of its employees and contractors;
13 (vii) procedures for deploying company and mutual aid crews to work
14 assignment areas; (viii) identification of additional supplies and
15 equipment needed during an emergency; (ix) the means of obtaining addi-
16 tional supplies and equipment; (x) procedures to practice the emergency
17 response plan; and (xi) such other additional information as the commis-
18 sion may require. The filing with the commission shall also include a
19 copy of all written mutual assistance agreements among utilities. The
20 commission shall accord protected treatment of confidential, competi-
21 tively sensitive or other proprietary information contained in any emer-
22 gency response plan. Each such corporation shall, on an annual basis,
23 undertake drills implementing procedures to practice its emergency
24 management plan. The department may adopt additional requirements
25 consistent with ensuring the reasonably prompt restoration of service in
26 the case of an emergency event.

27 (b) After review of a corporation'S emergency response plan, the
28 commission may require such corporation to amend the plan. The commis-

1 sion may also open an investigation of the corporation's plan to deter-
2 mine its sufficiency to respond adequately to an emergency event. If,
3 after hearings, the commission finds a material deficiency in the plan,
4 it may order the company to make such modifications that it deems
5 reasonably necessary to remedy the deficiency.

6 (c) The commission is authorized to open an investigation to review
7 the performance of any corporation in restoring service or otherwise
8 meeting the requirements of the emergency response plan during an emer-
9 gency event. If, after evidentiary hearings or other investigatory
10 proceedings, the commission finds that the corporation failed to reason-
11 ably implement its emergency response plan or the length of such corpo-
12 ration's outages were materially longer than they would have been but
13 for such failure to reasonably implement its emergency response plan,
14 the commission may deny the recovery of all, or any part of, the service
15 restoration costs, commensurate with the degree and impact of the
16 service outage; provided, however, that nothing herein limits the
17 commission's authority to otherwise commence a proceeding pursuant to
18 sections twenty-four and twenty-five of this chapter.

19 (d) The commission shall certify to the department of homeland securi-
20 ty and emergency services that each such corporation'S emergency
21 response plan is sufficient to ensure to the greatest extent feasible
22 the timely and safe restoration of energy services after an emergency.

23 § 5. Section 68 of the public service law, as amended by chapter 52 of
24 the laws of 1940, is amended to read as follows:

25 § 68. [Approval of incorporation and franchises; certificate] Certif-
26 icate of public convenience and necessity. 1. Certificate required. No
27 gas corporation or electric corporation shall begin construction of a
28 gas plant or electric plant without first having obtained the permission

1 and approval of the commission. No such corporation shall exercise any
2 right or privilege under any franchise hereafter granted, or under any
3 franchise heretofore granted but not heretofore actually exercised, or
4 the exercise of which shall have been suspended for more than one year,
5 without first having obtained [the permission and approval of] a certif-
6 icate of public convenience and necessity issued by the commission.
7 Before such certificate shall be issued a certified copy of the charter
8 of such corporation shall be filed in the office of the commission,
9 together with a verified statement of the president and secretary of the
10 corporation, showing that it has received the required consent of the
11 proper municipal authorities. The commission shall have power to grant
12 the permission and approval herein specified whenever it shall after due
13 hearing determine that such construction or such exercise of the right,
14 privilege or franchise is [necessary or] convenient and necessary for
15 the public service. In making such a determination, the commission shall
16 consider the economic feasibility of the corporation, the corporation's
17 ability to finance improvements of a gas plant or electric plant, render
18 safe, adequate and reliable service, and provide just and reasonable
19 rates, and whether issuance of a certificate is in the public interest.
20 Except as provided in article [fourteen-a] fourteen-A of the general
21 municipal law, no municipality shall build, maintain and operate for
22 other than municipal purposes any works or systems for the manufacture
23 and supplying of gas or electricity for lighting purposes without a
24 certificate of authority granted by the commission. If the certificate
25 of authority is refused, no further proceedings shall be taken by such
26 municipality before the commission, but a new application may be made
27 therefor after one year from the date of such refusal.

1 2. Revocation or modification of certificate. The commission may
2 commence a proceeding to revoke or modify such certificate as it relates
3 to such corporation's service territory or any portion thereof based on
4 good cause shown, with the inquiry informed by consideration of the
5 following factors:

6 (a) the factors identified in subdivision one of this section for
7 issuance of a certificate of public convenience and necessity;

8 (b) whether another person, firm or corporation is qualified, avail-
9 able, and prepared to provide alternative service that is adequate to
10 serve the public convenience and necessity, and that the transition to
11 such alternative person, firm or corporation is in the public interest;
12 and

13 (c) upon any other standards and procedures deemed necessary by the
14 commission to ensure continuity of safe and adequate service, and due
15 process.

16 § 6. Paragraph d of subdivision 1 of section 119-b of the public
17 service law, as amended by chapter 445 of the laws of 1995, is amended
18 to read as follows:

19 d. "underground facilities" means pipelines, conduits, ducts, cables,
20 wires, gas production and gathering pipeline systems designed to operate
21 at three hundred pounds per square inch gauge or higher, manholes,
22 vaults or other such facilities or their attachments[, which have been]
23 installed underground by an operator to provide services or materials.
24 Such term shall not include oil [and gas] production and gathering pipe-
25 line systems used primarily to collect oil [or gas] production from
26 wells.

1 § 7. Subdivision 4 of section 760 of the general business law, as
2 amended by chapter 685 of the laws of 1994, is amended to read as
3 follows:

4 4. "underground facilities" means pipelines, conduits, ducts, cables,
5 wires, gas production and gathering pipeline systems designed to operate
6 at three hundred pounds per square inch gauge or higher, manholes,
7 vaults or other such facilities or their attachments[, which have been]
8 installed underground by an operator to provide services or materials.
9 Such term shall not include oil [and gas] production and gathering pipe-
10 line systems used primarily to collect oil [or gas] production from
11 wells.

12 § 8. Paragraphs a and b of subdivision 1 of section 765 of the general
13 business law, as amended by chapter 685 of the laws of 1994, are amended
14 to read as follows:

15 a. Failure to comply with any provision of this article shall subject
16 an excavator or an operator to a civil penalty of up to [one] two thou-
17 sand five hundred dollars for the first violation and up to an addi-
18 tional [seven] ten thousand [five hundred] dollars for each succeeding
19 violation [which] that occurs [in connection with the entire self-same
20 excavation or demolition activity] within a [two] twelve month period.

21 b. The penalties provided for by this article shall not apply to an
22 excavator who damages an underground facility due to the failure of the
23 operator to comply with any of the provisions of this article nor shall
24 in such instance the excavator be liable for repairs as prescribed in
25 subdivision [five] four of this section.

26 § 9. This act shall take effect immediately.