September 30, 2025

To: Senator Comrie, Chair, Senate Committee on Corporations, Authorities, and Commissions, and Senator Parker, Chair, Senate Committee on Energy and Telecommunications.

From: The Public Utility Law Project

Re: PULP's Written Testimony for the Senate's Hearing to Conduct Oversight of the Public Service Commission's Process Related to Rate Case and Generic Proceedings, and to review the Department of Public Service's Efforts to Implement and Achieve the Goals of the Climate Leadership and Community Protection Act.

I. INTRODUCTION

The Public Utility Law Project of New York ("PULP") is New York's only independent nonprofit whose sole interest is to advocate on behalf of low- and fixed-income utility consumers. Every day, PULP assists households across the state struggling with ever-rising utility bills and represents their interests in regulatory proceedings before the Public Service Commission ("PSC"). In the past two years, PULP has intervened in over a dozen rate cases and participated in numerous policy proceedings including those on energy affordability,[1] the Clean Energy Standard,[2] extreme heat protections,[3] and other issues.

We appreciate the opportunity to testify before the Senate Committees on Corporations, Commissions, and Authorities and Energy and Telecommunications. PULP's comments herein focus on the need to reform policies and processes at the PSC and Department of Public Service ("DPS") so that they are more equitable, transparent, and responsive to the public interest.

II. BACKGROUND

A. The Roles of NYS's Public Service Commission & Department of Public Service

New York State was one of the first in the country to create a utility Public Service Commission ("Commission" or "PSC"). Formed in 1907, the Commission's mission is to ensure

[1] Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers In the Matter of Budget Appropriations to Enhance Energy Affordability Programs, PULP Comments on Department of Public Service Staff's White Paper on Implementing an Enhanced Energy Efficiency Program, dated May 29, 2025.

[2] *See*, Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, PULP Comments, dated October 31, 2024

[3] See, Case 24-M-0586, In the Matter of Extreme Heat Protections, Practices and Procedures, PULP Comments in Response to Department of Public Service Staff Report and Recommendations Regarding Utility Consumer Protections During Extreme Heat Events, dated August 4, 2025

utilities provide safe and reliable service at just and reasonable rates.[4] The Commission currently includes seven Commissioners, appointed by the Governor and confirmed by the NYS Senate. They vote on Orders establishing utility rate plans, as well as Orders directing specific practices and establishing programs.

The Department of Public Service Staff ("DPS") is the staff wing of the Commission. They report to the Commission and regulate the private utilities. They are always a party to the rate cases. Together, the Commission and the Department set utility rates, regulate the investor-owned utilities' operations and procedures, implement the Public Service Law, handle individual customer complaints, and develop processes through generic proceedings. Their work is tremendously important to everyday New Yorkers who depend on utility service.

B. How Other States' Utility Regulatory Bodies Are Structured.

PULP has researched other states' utility regulatory structures to evaluate how New York's Commission compares. Recognizing the Legislature's interest in the current structure of the PSC, we provide information for your review and consideration. Due to the length of this research, please see the attached Addendum for this information.

III. UTILITY RATE CASES AND GENERIC (POLICY) PROCEEDINGS

A. The Rate Case Process in New York State

Setting utility rates is one of the most fundamental undertakings of the PSC. Rate cases are the evidentiary process that the PSC uses to evaluate rate change requests from utilities. Each case begins when a utility company files a petition with the Commission to modify its delivery rates. These proceedings are supposed to run for a statutory maximum of 11 months,[5] though extensions are possible – and common – under "make whole" provisions, which permit utilities to recover approved increases retroactively.

It's important to distinguish between the two types of charges on customer utility bills: delivery and supply. Delivery charges include the costs of bringing service to homes and businesses. They are regulated by the PSC and are the subject of the rate case process. Supply charges are the cost of electricity or gas itself; these rates are set by the markets and simply passed through to the consumer at no markup. Supply rates can be volatile, as they are influenced by the global energy markets. For instance, supply rates went up after Russia invaded Ukraine. We also saw increases in supply rates this June and July due to heatwaves where electricity supply could not meet the demand.

When a utility seeks new delivery rates, it must submit extensive testimony and exhibits to explain the rationale for its request. These filings are complex, technical, and voluminous and

[4] Regulation and oversight first began in 1843 with focus on New York's railroads. By 1855, the State created the Railroad Commission. Then in 1859 New York State created the Office of the Inspector of Gas Meters. Then in 1907 the State approved statewide public utility regulation; New York State Archives, "The Department of Public Service," available at: https://www.archives.nysed.gov/creator-authority/new-york-state-department-public-service#:~:text=Turning%20to%20other%20utilities%2C%20the,also%20made%20over%20the%20years.

[5] *See*, PSL 66(f)(12).

include dozens of documents that can sometimes span hundreds of pages *each*. They cover issues such as capital investments in electric or gas infrastructure, customer service, information technology, cyber security, staffing levels, and more.

Under the Public Service Law, these submissions support a one-year rate plan that forms the basis of the rate case. Once a case number is assigned in the Commission's Document Matter Management ("DMM") database, individuals and organizations may seek party status to participate in the case. These "intervening parties" can include local governments, business and industry representatives, ratepayer advocacy organizations like PULP, environmental advocates, community groups, state agencies, and other stakeholders.

During the first few months of a rate case, parties join the proceeding and can engage in discovery through *Interrogatory Requests* ("IRs"). The utility's responses can be incorporated into direct testimony submitted by intervenors, which serves as a parties' formal response to the company's initial filing. Intervenors can support or oppose specific proposals made by the company and often advance their own proposals that relate to the utility's operations. Shortly after initial testimony is filed – usually about two to three weeks – all parties, including the utility, have the opportunity to submit rebuttal testimony to counter the proposals raised by others. From there, the parties must decide whether the case will proceed on one of two possible tracks: litigation or confidential settlement.

Litigation ultimately produces a one-year rate plan at the end of the parties' work and is infrequent in New York. The most recent example was Central Hudson Gas & Electric's 2023 rate case, which required a 10-day evidentiary hearing with cross examination of both the Company and DPS staff. That process culminated in a Recommended Decision ("RD"), drafted by the case's Administrative Law Judges. The RD was approved by the Commission on July 18, 2024, setting new rates effective for a single year. However, because litigation cannot establish multi-year rate plans, Central Hudson filed a new rate case just two weeks later.

By contrast, confidential settlement negotiations allow parties to develop a Joint Proposal ("JP") that addresses a wide range of issues and typically sets rates for multiple years. Most JPs span three years, with rates rising annually, but they sometimes span longer time frames. For example, Veolia Water's 2024 case produced a four-year rate plan. These negotiations follow the Commission's settlement guidelines and require extensive participation from all parties. Overall, the settlement process provides stakeholders with some flexibility, but also raises many questions about transparency, accountability, and participation, which PULP will address in greater detail later in this testimony.

At some point during the 11-month process, public statement hearings are scheduled to allow the public to provide comments on the utility company's rate filing. These hearings, once offered exclusively in person, now occur in both virtual and in-person formats. Additionally, comments may be submitted in the case's DMM docket or verbally via a dedicated phone number. While comments are generally accepted throughout the tenure of the proceeding, they carry the most weight when submitted before the Commission votes on a RD or JP.

The PSC considers the evidentiary record of the rate case, along with the public's input and whether the settlement is contested,[6] before deciding whether to approve or modify the request. At the close of the case, the Commission does not vote on the utility's original petition, but rather on an Order based on either an RD (in the case of litigation) or a JP (in settlement). In practice, both outcomes often reduce the utility's initial revenue request. In the case of settlement, the Order oftentimes also establishes new customer service initiatives, operational and staffing changes, and more.

When reviewing a JP, the Commission specifically must determine whether the settlement is just, reasonable, and in the public interest."[7] This assessment includes:

1. Consistency with the law and regulatory economic, social and environmental State and Commission policies;
2. Whether the terms of the joint proposal compare favorably with the likely result of a fully litigated case and produce a result within the range of reasonable outcomes;
3. Whether the joint proposal fairly balances the interests of ratepayers, investors and the long-term soundness of the utility; and
4. Whether the joint proposal provides a rational basis for the Commission's decision.

While it is generally understood that when Commissioners vote to enact a JP, they can approve, deny, or modify it through the Order, recent discussions have underscored limits on this authority. In August 2025, Commissioners cautioned that rejecting a proposal outright, without any further action, could leave ratepayers worse off since it would allow the utility's original rate filing to take effect. In another exchange at the same meeting, it was explained that any "material changes" to a JP could trigger a process whereby the proposal would be sent back to the settling parties.[8] PULP believes that these limits should be discussed, reviewed, and reformed.

B. "Generic" or policy proceedings.

The Department and Commission also oversee "generic" (policy) proceedings, which address broad policy questions, issue areas, or specific programs. These proceedings may be opened by Commission authorization or in response Commission to a petition filed by a stakeholder. They typically involve the release of a DPS staff whitepaper, followed by a public comment period, and then the Commission will vote ultimately on an Order to implement policies determined in the proceeding. Examples of generic proceedings include topics such as long-term gas planning, the energy affordability policy group, the extreme heat docket, and more.

Overall, generic proceedings can be valuable forums to explore systemic issues that cut across multiple utilities or rate cases and change policy or procedures. At the same time, they

[6] *See*, Cases 90-M-0225 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992), p. 30-31

[7] *Id*, p. 30.

[8] On August 16, 2025, the NYS Public Service Commission met to vote on the National Grid ("NiMo") upstate rate case and the Central Hudson rate case, The video recording of the PSC August Session is available at: https://www.youtube.com/watch?v=CdYiwspawwY.

can generally be difficult for the public to monitor and participate in. There are hundreds of generic proceedings, many of which do not have specific deadlines for completion of the work intended. This can make it very challenging for stakeholders to know how and when to participate in generic proceedings.

IV. Barriers to Participation

A. Barriers to Participation in Rate Cases and Generic Proceedings

Utility rate cases are arguably the most consequential proceedings that the PSC oversees, but the process itself presents numerous challenges for consumer advocates and other smaller stakeholders. These cases are long, costly, and legally complex, with steep barriers to entry and systemic barriers to fair and equitable participation. The following subsections outline the major obstacles PULP has observed across more than a dozen recent cases.

1. Challenges facing new and smaller intervenors.

Each year, PULP participates in several rate cases before the PSC and with the DPS staff – eight in 2024 and four in 2025. In doing so, we have consistently observed how difficult the process is for new and smaller intervenors. For instance, even the very first step to request party status can take newer stakeholders hours or even days to complete and submit. Once admitted, many parties are also unsure how to participate in discovery, what to expect from testimony, or how to engage in settlement or litigation.

PULP acknowledges that, when cases go to settlement, parties can access the Department's settlement guidelines, which are found in previous Orders. Unfortunately, PULP has heard repeatedly how difficult Orders can be to follow and understand, especially for non-lawyers who want to participate in the process. While the Secretary's Office can provide limited guidance on how to file public-facing documents, to PULP's knowledge, there is no comprehensive procedural manual that explains the settlement guidelines or even how to effectively participate as a party to a rate case. PULP recognizes and appreciates the recent steps taken by the Department to ease these burdens, such as publishing a template for direct testimony and creating a webpage with basic instructions to participate.[9] However, we believe they remain insufficient and do not provide the clarity and accessibility that new stakeholders typically need.

The lack of official, user-friendly resources from the DPS has ultimately led PULP to create FAQ materials and offer "Rate Case 101" trainings for the general public. These presentations cover many of the most common issues and questions we hear from newer parties. We have taken on this work because without it, many stakeholders would struggle to find their footing, while parties with experience are able to continue at their own speed. With all of that said, it is a considerable undertaking to support so many new parties while we are also deeply engaged in the substantive aspects of these cases. Ultimately, PULP believes much more can be done by DPS to enhance the process and provide an equitable and fair playing field, which we will describe in detail later in this testimony.

[9] *See*, DPS Testimony Transcript, available at: https://dps.ny.gov/dps-testimony-template.

a. The issues with confidential settlement.

Disclaimer - the following sections will not include any confidential information obtained by PULP from participating in past settlement meetings. PULP takes our role in the rate case process very seriously and we respect, adhere to, and follow the confidentiality rules. As such, our testimony in relation to settlement will be high level and generalized to apply across rate cases.

Once parties go into confidential settlement, parties often face numerous barriers that make it difficult to participate in an equitable manner. Utilities typically control the agenda and the meeting schedule, and they also frequently facilitate the settlement meetings themselves. In practice, this limits the opportunities for smaller intervenors to elevate proposals, ensure their issues are addressed, or even secure space on an agenda. Moreover, this burden is compounded by the pace of the negotiations, which often involve daily meetings that can span many hours at a time. In truth, it can become unwieldy even for organizations like PULP who are dedicated to and experienced in rate cases. Ultimately, these demands can force new or smaller parties to scale back their participation or drop out altogether.

PULP notes that the recent introduction of settlement judges to facilitate settlement meetings has been a positive development overall.[10] PULP generally promotes early intervention by judges or third-party moderators at the moment a notice of settlement is filed in the rate case. For this reason, PULP believes that the use of settlement judges or independent moderators should be a standard feature of every rate case settlement going forward.

b. Treatment and Respect of Parties Generally

Treatment of the parties is another vital matter that requires review. Unfortunately, PULP has been involved in several rate cases and generic proceedings where parties have felt disrespected, frustrated, or unheard due to comments and actions by other parties. While much of this tension arises in confidential settlement, it is not limited to that setting. PULP believes that the fair treatment of *all* parties is paramount to producing outcomes that reflect a range of perspectives. Neutral facilitation and clear expectations for respectful conduct can help deescalate conflicts and would allow parties focus on the substantive issues of the proceeding at hand. PULP elevates this topic for consideration.

c. *The lack of clear timelines for the Commission to Rule on Petitions and Motions*

As we noted earlier, the lack of a comprehensive procedural manual leaves many parties generally uncertain about how to navigate rate cases and other proceedings. However, one concrete example that PULP would like to highlight is the absence of any clear timeframe in law or regulation for when the Commission must rule on a motion or a petition. PULP itself has filed

[10] *See*, Cases 24-E-0060 et al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc., *Ruling on Schedule and Settlement Judge*, August 28, 2025. *See also*, Cases 24-E-0461 et al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation, *Ruling Further Postponing Evidentiary Hearing*, February 25, 2025.

petitions that went unanswered and observed motions – both our own and those of other parties – moot at the close of a rate case rather than decided on their merits. This lack of clarity undermines confidence in the process. The establishment of more concrete and specific rules of procedure would greatly help parties navigate rate cases and generic proceedings with more certainty and structure.

2. Rate case related costs are another element that often limits party participation and potential.

Another major barrier for many small intervenors is the cost to participate in rate cases or generic proceedings. Even for experienced parties, it is very difficult to engage to the same degree as the larger, well-resourced parties. Utilities are authorized to recover expenses for attorneys and experts through rates, but no such mechanism exists for individuals or nonprofits that represent consumers. Some parties, such as the City of New York through the Office of the Mayor, can afford to hire outside counsel to represent them in rate cases and generic proceedings. Others must rely on limited staff or even volunteers.

These cost barriers become especially significant when cases go to litigation. In 2024, the Central Hudson rate case required 10 full days of hearings in Albany, with no option for virtual participation. Many small intervenors were unable to attend all 10 days of litigation. Communities for Local Power ("CLP"), a small nonprofit, had to make the difficult decision to commute daily or find lodging in Albany. Due to their active participation, they ultimately paid to stay in Albany so that they could continuously prepare for the next day of litigation. We highlight CLP's experience because it illustrates how the current structure imposes significant and disproportionate burdens on smaller parties.

Moreover, the costs did not end with travel and lodging. Currently, the ALJs require hard copies of every exhibit, enough for every party, the panel being cross-examined, and the Judges, as electronic copies are generally not accepted as evidence. In reality, this means that parties who want to conduct cross examination and use exhibits may have to print 20 copies of each document they may *or may not* use. For small intervenors, this could be hundreds of pages, which comes at a significant expense to intervenors, including PULP. In one recent case alone, PULP spent close to $3,000 on printing costs. For two rate cases in 2023, PULP spent close to $5,000 on printing costs, an expense that understandably surpassed our printing budget. Larger entities often can print these documents internally, but smaller parties must either pay a premium at a commercial printer or spend many hours running their small office machines.

Lastly, PULP acknowledges that these challenges are not confined to litigation alone. Similar barriers arise during evidentiary hearings that follow confidential settlement, but the burdens are often less pronounced since not all parties choose to participate in cross-examination. Nonetheless, the underlying inequities remain present in both settings.

a. Hiring of Expert Witnesses in Rate Cases and Policy Proceedings

Besides the logistical expenses already mentioned, the ability to hire experts is another area where many small intervenors, including PULP, face significant barriers. Rate cases are highly technical, especially when it comes to issues like rate design or setting the Return On

Equity ("ROE"). PULP currently has an in-house expert whose analysis supports PULP's testimony, but we frequently identify areas where outside expertise would greatly strengthen our advocacy. For example, PULP believes the state must explore alternatives to the existing rate design practices to ensure energy affordability in the future, but we lack the resources to bring on a specialist to fully develop and advance proposals around this.

3. Procedural Barriers to Participation Include the Statutory 11-month rate case process

In addition, the Public Service Law only provides an 11-month window for rate cases.[11] While that may appear significant, in practice, settlement negotiations typically do not begin until around month five. This leaves just four to five months for parties to attempt to reach an agreement. For many intervenors, particularly those that do not have dedicated rate case staff, this timeline is tight and onerous. It exacerbates the resource strain already described previously and makes it especially difficult for smaller intervenors to participate on equal footing. Even PULP, who has multiple staff members with rate case expertise, cannot dedicate a single person to any particular case.

We do acknowledge that extensions of the 11-month window are possible. However, this practice is a double-edged sword since it triggers what is known as "rate compression." Ultimately, utilities can retroactively recover the approved increases for the time beyond the 11-month suspension period, which leads customers to face steeper and more concentrated bill impacts. So while extensions might provide more time for settlement negotiations to occur, the looming risk of rate compression oftentimes drives parties to hurry the process even when more time may be needed to resolve pertinent issues.

4. Barriers to participating in generic proceedings.

While generic proceedings can serve as a forum for addressing important issues, they often present real challenges for participants. Unlike rate cases, which are bound by a statutory deadline, most generic proceedings lack any clear timeline for resolution. Many open without the public knowing what the end goal is, how the process will unfold, or when it will conclude. Some also remain active for years on end without producing tangible outcomes, even as parties continue to devote time and resources to them. This lack of certainty and structure can create significant uncertainty for stakeholders and leave them unsure how to prioritize their participation. For organizations like PULP with limited capacity, it forces us to weigh which proceedings would most benefit from having our voice in it.

The generic proceedings can also be a place for ideas to be "punted." For example, ideas raised by PULP and other parties in rate cases are sometimes dismissed in rebuttal testimony and redirected to generic proceedings instead. This practice forces stakeholders to chase the same issue across multiple venues without any clear direction, which can be very frustrating.

[11] *See*, PSL 66(f)(12).

V. PULP'S RECOMMENDATIONS

PULP offers several recommendations for making the utility rate case process more equitable and fair to all parties. These include but are not limited to:

A. Leveling the Playing Field for Consumers

1. Establish an Office of Public Participation ("OPP")

Now more than ever, consumers need an equal seat at the negotiation table in matters that affect the affordability and reliability of essential utility services. One way New York can improve accessibility in these PSC proceedings is to establish an Office of Public Participation ("OPP"). The purpose of this office would not be to offer legal advice or strategy but to offer trainings and guidance so that all parties, regardless of their size, resources, or experience, can participate on more equal footing. PULP envisions this Office could, in a similar vein to what PULP is doing currently, create and distribute plain-language guides and FAQs to address common issues and help guide stakeholders through the process. It could also host regular, publicly advertised training courses that outline the roles, expectations, and opportunities for participation. To make this information available, the training should also be recorded and posted online for stakeholders to access at any time.

New York can look to other states when creating an Office of Public Participation. For example, California has a Public Advocates Office ("PAO"), a division within their Public Utilities Commission, that is tasked with advocating on behalf of utility ratepayers. In addition to their advocacy for affordable, safe, and reliable utility service, with a focus on vulnerable populations like low-income households and DACs,[12] they also offer workshops, outreach, and tools to help stakeholders who may not have legal expertise understand the process and participate effectively.

2. Give consumers a seat at the negotiation table in rate cases and policy proceedings.

a. Authorize intervenor funding to allow for the reasonable reimbursement of costs and expenses to participate.

Several other states have recognized that financial barriers limit meaningful participation in regulatory proceedings and have created intervenor funding programs to address them. California offers one of the most robust models through its Intervenor Compensation Program, whereby stakeholders who make a "substantial contribution" to a proceeding can be compensated for their work.[13] Although the program is ratepayer-funded through small surcharges on customer bills,[14] it operates in a transparent and accountable manner. The Compensation Program Guide details the process, including forms and instructions, and clearly categorizes the types of participants, the various levels of expertise, and the corresponding

[12] See, *Disadvantaged Communities Trifold Brochure*, California Public Utilities Commission.
[13] See, *Intervenor Compensation Program Guide*, California Public Utilities Commission.
[14] See, *Hourly Rate Chart*, California Public Utilities Commission.

compensation. Additionally, the California Public Utility Commission conducts a market rate study to establish rates that are accurate and considerate to education, experience, location, and an adjustment for benefits (social security, retirement, disability, sick time, etc.) and overhead costs (rent, supplies, staff, etc.).[15]

Illinois has also established an intervenor funding system to support residential customers and nonprofit organizations that represent consumer interests.[16] To qualify, these parties must demonstrate meaningful participation through testimony, briefs, or arguments on significant issues that affect utility rates or services. They must also demonstrate that their participation in the proceeding would cause financial hardship. Compensation is provided if the Commission determines that their involvement substantially contributed to the proceeding.

Lastly, in 2020, Oregon ran a pilot program that has since evolved into what's known as "Justice Funding." This program is specifically designed to enhance participation by groups that advocate for environmental justice issues and low-income communities.[17] Justice Funding comes in two forms: case funding, where applicants can receive up to 50% of their costs up front for a specific docket, and pre-certification grant funding, where groups that expect to participate in multiple proceedings can apply once but receive support up to five times throughout the year.[18] This approach recognizes that intervenor compensation provides agency and removes barriers for organizations who represent communities who are historically excluded from regulatory proceedings by providing financial support to meaningfully engage in decision-making.

b. Establish an Independent Office of the Utility Consumer Advocate.

PULP believes that creating a truly independent Office of the Utility Consumer Advocate will help result in better public outcomes. In particular with the utility rate cases, the process is long, costly, and legally complex, making it unrealistic for households and many nonprofits or community-based organizations to engage on equal footing without a dedicated advocate. An independent Office of the Utility Consumer Advocate ("UCA") with the expertise and authority to intervene in these cases would correct this imbalance and help ensure that residential customers are represented as zealously as utilities and other major stakeholders in decisions that directly affect their household budgets and access to essential utility services.

Although prior veto messages have suggested that creating an independent UCA would be duplicative of existing state entities, PULP believes this critique is misplaced.[19] Both DPS and the Department of State's Utility Intervention Unit ("UIU") are charged with representing *all* utility customers – both residential and commercial. These dual mandates are inherently in conflict, since the interests of residential and commercial customers often diverge. Additionally,

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[15] *See*, *Market Rate Study*, California Public Utilities Commission.
[16] *See*, ICC, "Consumer Compensation Fund", 2023, https://icc.illinois.gov/informal-processes/Consumer-Intervenor-Compensation-Fund
[17] *See*, "Intervenor compensation programs can level the regulatory playing field", Emily Piontek, Energy News, 2021, available at: https://energynews.us/2021/09/24/commentary-intervenor-compensation-programs-can-level-the-regulatory-playing-field/.
[18] *See*, "Intervenor Funding", Oregon Public Utility Commission, available at: https://www.oregon.gov/puc/filing-center/pages/intervenor-funding.aspx.
[19] *See*, Veto No. 55 of 2021; *see also*, Veto No 259 of 2019.

DPS staff are also explicitly tasked with protecting the financial health of utilities, a responsibility that also often directly conflicts with affordability for consumers. Meanwhile, the UIU is administratively subordinate and lacks the statutory independence to act solely in the interests of residential customers.

By contrast, an independent UCA established under this legislation would be appointed to a six-year term and tasked exclusively with representing residential customers. Far from duplicating existing efforts, it would fill the structural gap that has left households underrepresented for decades. PULP believes this independence matters, as the UCA would be able to intervene in cases without having to reconcile competing commercial interests, without deference to other state agencies, and without the obligation to weigh the financial outcomes for utilities against the affordability of service for consumers.

Lastly, the experience of other states demonstrates the value of such an office. In California, for example, the Public Advocates Office secured nearly $2.3 billion in savings in the San Diego Gas & Electric and Southern California Gas rate cases,[20] as well as $532 million over three years in four major water utility cases.[21] These outcomes illustrate the powerful impact an independent consumer advocate can achieve, delivering billions in savings while safeguarding the affordability and reliability of essential utility services. Even if New York only achieved a fraction of these results, the substantial benefit for consumers far outweighs the modest resources required to maintain such an office.

3. Allow the PSC to authorize rate plans longer than one year for litigated cases.

PULP supports amending the Public Service Law to allow the Commission to set rates for more than one year when rate cases are litigated. Under the current statute, litigated cases are limited to one-year outcomes, despite confidential settlement negotiations routinely producing multi-year rate plans. We believe that this limitation ultimately discourages litigation and creates unnecessary uncertainty for ratepayers, as utilities can file for new rates almost immediately after a litigated case concludes. A recent example of this is Central Hudson's 2023 and 2024 rate cases, where on July 18, 2024, the Commission approved a new 1-year rate plan following litigation.[22] but the Company filed a new rate case request only two weeks later, starting the administrative process over. From PULP's perspective, this process strengthened accountability, allowed for a full vetting of the utility's proposals, and delivered a fairer outcome for customers. As such, PULP is interested in exploring the setting of litigated rate plans for up to the 3-years, with appropriate guardrails and protections to maintain balance for rate payers and the utility investors.

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[20] *See*, 2024 Annual Report, the Consumer Advocate at the California Public Utilities Commission, page 9, at https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/press-room/reports-and-analyses/annual-reports/2024-public-advocates-office-annual-report.pdf.

[21] *Id.*, at 16.

[22] *See*, Press Release, "PSC Dramatically Reduces Central Hudson's Rate Request," July 18, 2024, available at: https://dps.ny.gov/news/psc-dramatically-reduces-central-hudsons-rate-request; see also, Cover Letter, 24-E-0461 et. Al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service. Aug. 1, 2024, the Company filed for new rates, two weeks after the PSC approved it's last rate plan.

4. Provide consistent involvement and process during confidential settlement, while prioritizing respectful treatment of all stakeholders.

a. The Need for Clear Procedural Guides

PULP believes that establishing an OPP would be a strong step toward lowering the barriers to engagement over the long term. In the immediate term, however, there is a critical need for clear, official procedural guides so that every party understands the rules, expectations, and steps involved in participating in a rate case or policy proceeding. Requiring the Department to develop such guides would immediately help level the playing field and encourage meaningful participation from all interested stakeholders.

b. Settlement negotiations should be structured and neutral.

PULP recommends the creation of clear and consistent rules and procedures to bring greater structure to the settlement process. This includes appointing a neutral third party, such as an ALJ or an outside mediator hired by the PSC, to oversee negotiations. Settlement negotiations should also proceed according to a consistent framework in every case, regardless of which parties are involved. Stronger procedural safeguards are also needed to support participation. Settlement meetings should be scheduled with sufficient notice and regularity to allow all parties ample time to prepare. Additionally, agendas should be set in a neutral or collaborative manner to ensure that all parties' issues are fairly included and considered.

Moreover, respectful and professional treatment should be a standard in all proceedings. In the past, PULP has recommended the adoption of an oath, rules, or guidelines governing conduct during settlement. Encouragingly, ALJs in both the Con Edison and NYSEG/RGE rate cases recently required parties to sign acknowledgement forms indicating that they will adhere to the Professional Rules of Conduct as set by the NYS Bar Association.[23] By establishing more consistent practices and procedures, PULP believes all parties will benefit.

5. PULP supports extending the statutory timeframe for rate cases from 11 months to 14 months.

For a variety of reasons, rate cases often extend beyond the 11-month statutory timeline. When parties wish to continue negotiations past that deadline, utilities must agree to grant an extension. Under current practice, the Department and the Public Service Commission apply a "make whole" agreement that allows utilities to retroactive recover rates for the additional time. However, this phenomenon has become routine practice. In the 2022 NYSEG/RG&E rate case, the process took approximately 15-months. In the 2022 Con Ed rate case, the process took

[23] Case 25-E-0072 et. al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service. Ruling on Party Status and Schedule, Attachment C, dated March 10, 2025; *see also*, Case 25-E-0375 et. al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service, Ruling Requiring Party Representatives to Execute Party Participation Acknowledgment Forms; the Rules of Professional Conduct is available at: https://nycourts.gov/ad3/agc/rules/22NYCRR-Part-1200.pdf.

approximately 18 months to complete.[24] While the height of the COVID-19 pandemic was likely a factor in some of the long rate case processes, in general, even more recent rate cases are taking 12-13 months to complete.

Given these realities, PULP believes reform of the make-whole process itself is warranted. While the Department and Commission have traditionally granted full make whole agreements, there is no explicit requirement for them to do so under the law. There should also be legally mandated guardrails set over the make whole to protect the public from retroactive increases that are no fault of their own. Spreading out the risk of settlement with the utility adds to the fairness of the process, while still allowing recovery for those rate cases that go beyond the rate period set by statute. For all of these reasons, PULP supports Senator Mayer and Assemblymember Mamdani's bill A.06951/S.5593,[25] which extends the statutory rate case period to 13 months, while reforming the make whole process currently used by the utilities, the Department, and the Commission.

6. The need to make procedural changes relating to motions and petitions.

PULP recommends setting specific timelines for the Commission to act on petitions and motions. Specifically, we recommend 10 calendar days to act on a motion, following the opportunity for parties to be heard, and 30 calendar days for the Commission to respond to petitions. PULP believes that setting timelines on when the Commission must act on motions and petitions will allow for better outcomes based on the merits at issue.

7. Reforms relating to the Public Service Commission.

PULP supports the following two efforts to enhance the powers of the Commission itself. The first being efforts to add more requirements over "who" may and "who may not" be considered when appointing new Commissioner to the PSC, as found in S7328A- Hinchey. Besides efforts to add Commissioners and provide more specific guidance relating to who should be a Commissioner, PULP is also supportive of efforts to provide Commissioners with their own independent staff. We believe that doing so will help the Commission as a whole produce better outcomes for the public.

It is our understanding that currently, most of the Commissioners do not have any independent staff, instead, they rely on the Department of Public Service staff to brief them and present issues, including rate cases. By giving the Commissioners independent issue area staff, there is the ability to review materials and proceedings with independent and enhanced proactive involvement. When it comes to rate design, for example, having issue area experts dedicated to assisting the Commissioners could enhance the use of new methodologies and technical expertise to address questions and concerns. PULP sees this effort as adding checks to the balance between the important roles of the Department staff and the Commissioners. PULP's research has shown

[24] *See*, Case 22-E-0064 et. Al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.
[25] *See*, S7328A, at https://www.nysenate.gov/legislation/bills/2025/S5593.

that independent staff are common in Maryland.[26] As a result, PULP supports these two measures.

B. PULP's recommendations for improving delivery rates.

1. Pending Legislation to Consider

PULP supports several existing bills that would help establish clearer guardrails around what is considered "just and reasonable" in order to maintain "safe and reliable service." The list that follows should not be viewed as exhaustive or final. We recognize that other bills merit consideration, and additional proposals may be introduced that we have not yet reviewed. Accordingly, we submit the following items to inform open discussion with stakeholders.

As of today, the legislative measures PULP is supportive of include, but are not limited to:

- **S.07693 (Mayer) /A.08150 (Barrett)** – requires electric and gas utilities to return all revenues in excess of their authorized rates of return on equity to ratepayers.
- **S.8213 (Hinchey) / A.2736 (Jacobson)** – requires that any capital expenses included in a utility's request for a rate increase are fully and publicly explained in the rate filing itself.
- **S.1896 (Mayer) / A.1028 (Barrett)** – requires the utilities to adopt the common equity ratio and rate of return on equity authorized by the public service commission.
- **S.1329 (Parker) /A.6204 (Carroll)** – narrows the instances where utilities can charge fixed charges to only the fixed costs and operation and maintenance expenses directly related to metering, billing, service connections and the provision of customer service.
- **S.5593 (Mayer) /A.695 (Mamdani)** – extends the statutory time period for utility rate cases from 11 months to 14, while limiting the use of the "make whole" mechanism.
- **S.1847 (Comrie) / A.2400 (Eichenstein)** – requires the PSC to consider "economic impact of utility rates and charges."
- **S.3734 (Mayer) / *NO SAME AS*** – caps how much utilities can recover from ratepayers for executive salaries and costs associated with their participation in rate cases. Under current practice, utilities are allowed to recover 100% of their operating expenses from ratepayers — even excessive executive salaries and their legal fees from applying to the PSC to raise rates.

In general, PULP believes that what is "just and reasonable" is a very broad standard and one that is worth exploring. In June 2025, the NYS Appellate Court issued a decision that PULP believes is a great legal basis for the NYS Legislature to use when determining whether potential changes to the Public Service Law are warranted.[27] The Appellate Court's decision elevates important pillars. The first being the importance of having clear legislative intent when passing legislation, thereby not relying solely on the black letter law but also using the bill jacket, including the Governor's approval message, to help explain why the law was written the way it

[26] *See*, State of Maryland job positing for a PSC Junior Commission Advisor, available at: https://www.jobapscloud.com/MD/sup/bulpreview.asp?b=&R1=25&R2=005478&R3=0021.
[27] *See*, NYS Appellate Court's decision in Central Hudson v. DPS- CV-23-2467, available at: https://decisions.courts.state.ny.us/ad3/Decisions/2025/CV-23-2467.pdf, hereinafter "Decision.

was and what its intent and purpose is.[28] The second pillar is the Department of Public Service itself, of which the Appellate Court provided great deference to in recognition of the highly technical nature of the ratemaking process. In giving the Department and Commission more tools, guidance, and guardrails through legislative reform, PULP feels confident that better results are possible to protect the public interest, while allowing the utilities to continue to operate and have the opportunity, not a guarantee, to earn.

2. Alternative Ratemaking Should Also be Considered.

PULP encourages New York State to explore any and all opportunities to advance affordability and equity. As part of these efforts, we recommend that DPS and the PSC issue a report to examine innovative alternative rates options. These could include, but are not limited to, the development of "green rates," percentage-of-income payment programs, equitable fixed charges, electric heating-specific rates, and other strategies to ensure that energy costs remain fair and accessible for all New Yorkers. Moreover, fundamental changes should be considered, such as full performance-based rate making.

a. *"Green" Rates*

PULP has explored the topic of "green" rates in a number of rate cases, all of which have been completed to date. What PULP means by "green" rates are rates not based on high monthly fixed charges and "declining block rates" where high energy users would pay more per unit used.[29] Rather, the term "green" rates are generally used to describe rate designs that encourage conservation.

One example of "green" rates is inclining block rates, or rates that increase at higher levels of usage. Another example of "green" rates is lower monthly fixed charges. In both of these examples, customers are rewarded for lowering their usage. PULP has consistently emphasized that LMI customers with high usage, especially with the switch to electrification, must be protected from adverse bill impacts associated with the adoption of green rates. This approach merits serious consideration as a part of the effort to advance equitable and sustainable energy policies.

b. *Percentage of Income Payment Plans*

New York State should also consider the use of Percentage of Income Payment Programs/Plans ("PIPPs"), which tie household energy payments to a fixed percentage of income and spread that cost out over the course of the year. PIPPs are already successfully utilized in many states and municipalities across the country. For example, in Ohio, financially vulnerable households (175% of the federal poverty guidelines) who heat with natural gas pay only 5% of their gross monthly income for gas and electricity bills, respectively. Moreover, for those that

[28] *Id*, at 5.
[29] See, 22-E-0064 & 22-G-0065, (Corrected) *Direct Testimony of Willian D. Yates, CPA, for the Public Utility Law Project of New York* at 65-74, https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C509EA3E-5027-4452-877E-734D671BF33A}.

heat with electricity, the payment is similarly capped at 10%. In both cases, the remainder of the bill is subsidized by the state.

Additionally, PIPPs help households address arrears. If participants pay their bills on time and in full each month, their outstanding balance is gradually reduced. After two years of consistent participation, any remaining arrears are eliminated.[30][2] This model ensures affordability while helping households manage and eventually eliminate past-due balances, making it a compelling option for New York to consider.

c. Equitable fixed charges

In NYS, all customers have fixed charges, also known as "customer charges" or "basic service charges," on their bills. The fixed charges are a monthly flat fee that every customer pays, regardless of the amount of electricity or gas consumed. Fixed charges cover costs for meter reading, billing, equipment and maintenance.

California's Public Utilities Commission ("PUC") has explored transitioning from usage-based electricity charges to a model that incorporates income-based pricing, specifically through income-graduated fixed rates.[31] In 2022, California's legislature passed a law setting a flat monthly charge based on customer income along with their consumption cost.[32] The law sought equity and authorized a higher fixed charge when the customer has a higher income. The California PUC voted to approve and implement the program in May 2024.[33] PULP urges New York State to review California's progress and similarly evaluate whether equitable fixed charges could be a useful option to ensure fairer energy pricing.

d. New York State Must Address Depreciation and "Stranded Assets."

PULP has previously submitted public comments calling on New York State to proactively take steps to address depreciation and "stranded assets" associated with the retirement of natural gas infrastructure.[34] Here in NYS, the investor-owned gas utilities have the right to recover a reasonable return on investment in infrastructure, raising concern that the last customers to leave the gas system could be left to shoulder disproportionate costs. PULP once again urges New York State to acknowledge these two issues and develop a comprehensive plan to address these issues equitably.

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[30] *See*, "*Percentage of Income Payment Plan (PIPP)*" page, https://development.ohio.gov/individual/energy-assistance/2-percentage-of-income-payment-plan-plus.

[31] *See, Income-based electric bills: The newest utility fight in California*, Canary Media, May 9, 2023, https://www.canarymedia.com/articles/energy-equity/income-based-electric-bills-the-newest-utility-fight-in-california?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202023-05-10%20Utility%20Dive%20Newsletter%20%5Bissue:50359%5D&utm_term=Utility%20Dive.

[32] *See,* California Assembly Bill 205 (Chapter 61 Law of 2022), available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB205.

[33] *See*, "CPUC Approves A New Billing Structure That Will Cut Residential Electricity Prices And Accelerate Electrification", May 9, 2024, available at: https://www.cpuc.ca.gov/news-and-updates/all-news/cut-residential-electricity-prices.

[34] *See*, PULP's Comments relating to the Climate Action Council's Final Scoping Plan ("FSP"), addressed to the NYS Senate, (January 2023).

PULP commends the work of the Climate Action Council, which prioritized the needs of LMI households in the transition away from natural gas. We support the Council's assessment that New York State must meaningfully engage with LMI households and residents of Disadvantaged Communities "to enable these households to make energy efficiency upgrades and electrify affordably."[35] PULP will continue monitoring NYS's progress on this front to ensure that the burden of the gas transition does not fall disproportionately on those who can least afford it.

e. Performance Based Ratemaking

Performance-Based Regulation ("PBR") is a different regulatory approach to ratemaking that seeks to align utility incentives with the interests of customers and society. PBR is essentially a collection of tools for the utility regulator to use, including but not limited to, revenue adjustment mechanisms (mechanisms that set the utility's target revenues for a five-year period, which are adjusted by a formula that accounts for inflation, a customer dividend, collected revenues, and extraordinary projects); performance mechanisms (including performance incentive mechanisms ("PIMs") that provide additional revenue opportunities if the utility meets certain performance outcomes, which are supplemented by a portfolio of scorecards and reported metrics to monitor the utility's progress); an innovative pilot process (a framework for expedited review for pilot projects to incent innovative programs and projects); and safeguards (including an Earnings Sharing Mechanism ("ESM") to protect the utility and customers from excessive earnings or losses and a re-opener mechanism in case all of specific parts of the PBR Framework need to be reexamined).[36] Full blown PBR seeks to compensate utilities based on their performance against target outcomes rather than just costs — and by removing perverse incentives. NYS currently has a hybrid-model where some PBR tools are used, but not all.

In New York State, PBR assumed a more prominent role as a policy implementation tool with the initiation of the Commission's "Reforming the Energy Vision", or "REV" framework in 2014.[37] Central to the idea behind REV was that:

> Under current ratemaking, utilities have little or no incentive to enable markets and third parties in creating value for customers. Rather, utilities' earnings are tied primarily to their ability to increase their own capital investments, and secondarily to their ability to cut operating costs, even at the expense of customer value. Utility earnings should depend more on creating value for customers and achieving policy objectives. Rather than simply building infrastructure, utilities could find earning opportunities in enhanced performance and in transactional revenues.[38]

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[35] *See*, Final Scoping Plan Full Report, at 356.
[36] *See,* Rocky Mountain Institute's *The Nuts and Bolts of Performance Based Regulation: Tools to Build a More Affordable, Reliable, and Equitable Grid*.
[37] *See,* Cases 14-M-0101 et al., *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*. Available at: https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0101.
[38] *See*, Case 14-M-0101, *Order Adopting Regulatory Policy Framework and Implementation Plan*, at 12. Available at: https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0B599D87-445B-4197-9815-24C27623A6A0}.

As a result, "earnings adjustment mechanisms" ("EAMs") tied to individual policy initiatives under the REV framework were implemented in almost all rate cases starting in 2015. In particular, utilities were to be rewarded for achieving predetermined targets for peak reduction/system efficiency; energy efficiency; interconnection, customer engagement and information access; greenhouse gas reductions, and affordability.[39] Each EAM included the opportunity to earn additional revenue *over-and-above cost-based rates*.

With the enactment of the CLCPA in 2019, EAMs became an even more important tool for incentivizing the utilities to achieve state policy goals – in this case, the achievement of the State's carbon reduction targets for 2050. The proliferation of new EAMs was again *additive* to cost-based rates, especially in giving the utilities vastly increased opportunities to earn returns on capital investments necessitated by the CLCPA. This "layering" of ratemaking approaches has led to concerns about double-incentives, underscoring the need for policymakers to evaluate, on a comprehensive basis, whether utilities earnings should be cost-based, performance-based, *or* a mix of mixed cost or performance basis. A rationalized approach could help avoid the current layering of one method on top of another, mitigating much of the risk of compensating utilities twice for the same thing. However, whichever method is ultimately chosen, care must be taken by regulators and lawmaker to adhere to foundational court decisions requiring states to set just and reasonable rates that balance the interests of utilities and ratepayers.

In this respect, it would be helpful for policymakers in New York to stay apprised of developments in the State of Hawaii. In July 2021, Hawaii's utility regulator started a five-year pilot program to implement PBR.[40] With the five-year time frame for the pilot program coming up in 2026, PULP recommends monitoring Hawaii's effort to determine how a full-blown PBR model could operate here in NYS, and whether that transition would benefit ratepayers.

f. Setting of the Return on Equity

Lastly, PULP would like to highlight California's model of setting utility profit levels and financing costs. Through a proceeding separate from their rate cases, known as the "Cost of Capital," state regulators review and update the utilities' authorized ROE every three years. Between those reviews, CA has a mechanism that automatically adjusts the authorized return if macroeconomic factors shift significantly. Also, the California PUC notes that in practice, the authorized ROE level is determined in Commission proceedings by examining various financial models and estimating market returns on investments for other companies with similar levels of risk. Importantly, like here in New York, it also emphasizes that authorized ROE is not guaranteed, and utilities may earn more or less depending on how efficiently they manage their operations and costs.[41]

C. PULP's recommendations for improving the generic proceedings.

[39] *See,* Case 14-M-0101, *Order Adopting a Ratemaking and Utility Revenue Model Policy Framework*, at 74 - 92. Available at: https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D6EC8F0B-6141-4A82-A857-B79CF0A71BF0}.
[40] *See,* State of Hawaii Public Utilities Commission website (Energy >> Performance Based Regulation).
[41] *See*, California Public Utilities Commission, What is the Cost of Capital?, at https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/cost-of-capital.

PULP believes that it is necessary to set procedural deadlines and notification processes in generic proceedings to support participating stakeholders. Whenever a party is told an issue belongs in another docket, the Department should issue a formal notice to that party and file it in both the docket where the item is being moved from and in the docket where the item is being recommended for re-direction. This notice should also provide a proposed timeline for when that matter will be addressed and resolved. Such a process would help create more transparency, accountability, and a clear record to ensure issues are not lost or stuck between various dockets.

Even more broadly, PULP recommends all generic proceedings should include well defined timelines and set deadlines for action items and outcomes. If additional time is necessary, all parties have the opportunity to request an extension. Having set timeframes will help keep momentum in the docket and outcomes on the horizon, thereby limiting the risk of stalled proceedings and never-ending efforts.

VI. CONCLUSION

PULP appreciates the opportunity to provide written testimony at today's hearing. We thank the State Senate for their interest in these issues and encourage the consideration of the recommendations and questions PULP has raised herein. Thank you.

Addendum

**The following research was conducted by Mia Williams-Payne, PULP's Program Associate & Community Liaison, during the fall of 2025.*

New York State's Public Service Commission shares some similarities with its neighboring states in Massachusetts and Connecticut. Each has a governor-appointed, three-member body responsible for overseeing utilities and advancing efforts toward clean energy.[42] The key differences in New York's model lie in how consumer interests are represented and where accountability ultimately falls.

Massachusetts demonstrates an effective approach to independent utility oversight. Its Department of Public Utilities (DPU) operates independently in its regulatory rulings, even though it sits under the Executive Office of Energy and Environmental Affairs.[43] More importantly, Massachusetts created the Energy and Ratepayer Advocacy Division (ERA) within the Attorney General's Office.[44] That separation is critical. It ensures the regulator, the utility, and the consumer advocate all have distinct roles. Ratepayers get a dedicated, independent voice in every proceeding.

New York, by contrast, has DPS staff both reviewing rate cases and reporting directly to the PSC, the same body that issues the final ruling. By having DPS staff both advocate for consumers and report to the PSC that decides the case, the system blurs the lines between oversight and advocacy—making it hard for the public to trust that ratepayer interests are fully protected.

Massachusetts' ERA avoids this problem by centralizing consumer representation. It speaks for all residential and small business customers with one unified voice and increases transparency through public-facing reports, press releases, and consumer guides that make regulatory decisions easier to understand.[45] Massachusetts' broader consumer-facing energy programs also generate large public benefits: the Mass Save 2024 report documents program results equivalent to $2.8 billion in total benefits (energy savings, demand savings, avoided emissions), illustrating how coordinated oversight and dedicated consumer advocacy can advance affordability and energy-efficiency outcomes.[46]

Connecticut offers another version of this model through its Office of Consumer Counsel (OCC), a fully independent agency that exists solely to advocate for ratepayers.[47] Like the ERA, it has legal standing in rate cases, reviews proposals, and ensures that utilities aren't the

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[42] *New York State Public Service Commission, "About the PSC." Available at:* https://dps.ny.gov/about-us
[43] *See, Massachusetts General Laws, Ch. 25, § 1. Available at:* https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25
[44] *See, Massachusetts Attorney General's Office, Energy and Ratepayer Advocacy Division. Available at:* https://www.mass.gov/info-details/learn-about-the-attorney-generals-energy-and-environment-bureau
[45] *See, Massachusetts Electric Rate Task Force – Phase 1 Kick-Off Meeting (Mass. Dept. of Energy Resources, Apr. 30, 2025) Available at:* https://www.mass.gov/doc/rate-task-force-phase-1-kick-off/download
[46] *See, Mass Save, "2024–2025 Statewide Energy Efficiency Plan." Available at:* https://www.masssave.com
[47] *See, Conn. Gen. Stat. Title 16, Chapter 277, §16-2a, Office of Consumer Counsel. Available at:* https://law.justia.com/codes/connecticut/title-16/chapter-277/section-16-2a/

dominant voices in the proceedings. Connecticut's independent Office of Consumer Counsel (OCC) documents concrete, near-term benefits from independent ratepayer advocacy: the OCC reports at least $390 million in direct savings to Connecticut ratepayers in FY 2022–2023 from its advocacy in state and federal proceedings,[48] with additional annualized savings identified in more recent filings. The Connecticut OCC also found that customers who shopped in the competitive supplier market saved $107.6 million in 2023 — evidence that active, independent consumer representation paired with robust market oversight can deliver measurable consumer benefits.[49]

Both Massachusetts and Connecticut prove that independent consumer advocacy is not only possible but beneficial. By separating regulation from consumer representation, they strengthen public trust and create more unbiased negotiations. In New York, we often hear from residents who feel their voices are marginalized in rate case proceedings. Adopting an independent advocacy model would ensure that ratepayers are represented as strongly as utilities and regulators themselves.

There are also valuable insights to be drawn from other states such as Texas and Georgia. Texas stands out because of its retail competition model. Unlike New York, where utilities are determined by the region you live in, Texans can choose their retail electricity provider.[50] This competitive marketplace is overseen by the Public Utility Commission of Texas (PUCT), which ensures fair practices and reliable service.[51] Texas also has an independent Office of Public Utility Counsel (OPC), dedicated to representing residential and small business customers in regulatory proceedings. The OPC plays a similar role to Massachusetts' ERA or Connecticut's OCC, but in a competitive marketplace, its advocacy is even more critical.

Georgia is unique in that its Public Service Commissioners are elected statewide, giving the public a direct say in who regulates utilities.[52] This structure can create greater accountability and responsiveness to consumer concerns, as commissioners must campaign for voter support and remain attentive to the needs of residential and small business customers. If the public perceives a commissioner as too aligned with utility interests, they have the power to vote them out. With proper campaign finance regulations to limit utility influence, a similar election system could potentially enhance transparency, public engagement, and trust in New York's utility regulation, ensuring that commissioners are directly accountable to the people they serve.

In New York, you cannot choose your delivery utility (Con Edison, National Grid, NYSEG, etc.)—that's strictly tied to where you live. However, New York does have ESCOs (Energy Service Companies) that sell electricity and natural gas supply.[53] Beyond ESCOs, we

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[48] *See, Connecticut Office of Consumer Counsel, "Annual Report FY 2022–2023." Available at:* https://portal.ct.gov/-/media/DRS/Research/annualreport/DRS-FY23-Annual-Report.pdf

[49] *See, Connecticut Office of Consumer Counsel, "Retail Choice Report 2023." Available at:* https://portal.ct.gov/das/-/media/das/communications/communications-list-docs/digest/digest-2022-2023/consumer-counsel-office-of.pdf

[50] *See, Public Utility Commission of Texas, "Power to Choose" Program. Available at:* https://www.powertochoose.org

[51] *See, Public Utility Commission of Texas, "About the PUCT." Available at:* https://www.puc.texas.gov

[52] *See, Georgia Public Service Commission, "About the PSC." Available at:* https://psc.ga.gov

[53] *See, New York State Department of Public Service, "ESCOs and Energy Choice in New York." Available at:* https://documents.dps.ny.gov/PTC/home

can continue exploring community-based initiatives and models such as what we see in Brooklyn with the Brooklyn Microgrid. The Brooklyn Microgrid is a current pilot program launched around 2016 in Brooklyn (Park Slope/Gowanus area). It uses blockchain technology to let neighbors who have rooftop solar panels sell excess electricity directly to other nearby residents.[54] The idea is "peer-to-peer energy trading," which feels closer to the Texas-style marketplace—but it's limited in scope and still technically operates within New York's utility framework. It shows how distributed energy resources (DERs) and community choice aggregation (CCA) can give New Yorkers some choice in sourcing. [14] Under New York law, Community Choice Aggregation (CCA) programs enable towns, villages, and counties to collectively procure electricity from alternative suppliers, representing the state's most comparable large-scale alternative to retail choice.[55]

These recommendations and research exist to highlight a fundamental flaw in New York's current PSC structure and propose alternative approaches for a fairer, more accountable process. As it stands, the PSC combines the roles of "advocate" and "decision-maker" within the same institution. This setup deprives ratepayers of a dedicated advocate to defend their interests. Even when DPS staff push back on utilities, the public perceives them as impartial, which undermines trust in the PSC's decisions.

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[54] *See, Brooklyn Microgrid, "About the Project." Available at:* https://www.brooklyn.energy/about
[55] *See, New York State Energy Research and Development Authority (NYSERDA), "Distributed Energy Resources." Available at:* https://www.nyserda.ny.gov

Public Utility Law Project
of New York, Inc.

May 12, 2025

Hon. Shelly Mayer
Legislative Office Building, Room 509
Albany, NY 12247

Hon. Didi Barrett
Legislative Office Building, Room 724
Albany, NY 12248

Re: **A8150 / S7693** – To require utilities to return profits that exceed their authorized return on equity to customers.

Dear Senator Mayer and Assemblymember Barrett:

The Public Utility Law Project ("PULP") writes today in support of your legislation to provide much needed financial support to utility customers in situations where their utility company earns a return on equity ("ROE") above the level authorized in their rate plan. PULP believes this legislation strikes a fair and equitable balance between utility companies and their customers by ensuring that excess earnings are returned to rate payers.

Earnings sharing mechanisms ("ESMs) are a tool designed to prevent utilities from significantly over-earning by splitting excess profits between the utility company and its customers. While these tools are included in many multi-year rate plans approved by the Public Service Commission ("PSC"), their structure varies and often includes a "dead band" – a range above the authorized ROE within which utilities keep all excess earnings. Although ESMs aim to incentivize utilities to pursue cost controls, productivity enhancements and operational efficiencies, PULP believes the inclusion of dead bands have disproportionately favored utilities.

For example, our analysis of the most recent major electric and natural gas rate cases indicates that, on average, ratepayers received only 14% of the total excess earnings subject to ESMs, while utilities retained the vast majority of the financial benefit.[1] In some cases, even when utilities exceeded their authorized ROE, customers received only a small fraction of those overearnings, diminishing the intended value of these mechanisms as consumer safeguards. This outcome is especially troubling given the financial hardship many New Yorkers continue to face due to rising utility costs and near-record levels of household energy debt.

Your legislation seeks to address this imbalance by providing clear directions that all overearnings must be returned to customers in a transparent and timely manner.

[1] Please see Figure 1 at the end of this letter.

It would replace the discretionary and inconsistent framework of existing ESMs with a uniform standard that ensures ratepayers are not penalized when utilities exceed their authorized profits.

For these reasons, PULP strongly supports this bill and thanks you for your continued leadership on behalf of New York's utility consumers. Please do not hesitate to contact us with any questions.

Sincerely,

Laurie Wheelock, Esq.
Executive Director and Counsel
Public Utility Law Project of NY

Figure 1 - Potential Savings from ESM Reform

Utility(ies)	Excess Earnings	Existing Sharing Mechanism		
		Company	Ratepayers	%
Con Edison (2025)	$125,510	$123,365	$2,145	1.7%
Central Hudson (2024)	$7,391	$6,168	$1,223	16.5%
Niagara Mohawk (2024)	$11,834	$9,354	$2,480	21.0%
Orange & Rockland (2024)	$45,060	$29,509	$15,551	34.5%
National Fuel Gas (2023)	$11,667	$8,886	$2,781	23.8%
National Grid NYC + LI (2023)	$32,568	$28,488	$4,080	12.5%
NYSEG/RG&E (2022)	$20,928	$13,075	$7,853	37.5%
Total/Average (2022 - 2025)	**$254,958**	**$218,845**	**$36,113**	**14.2%**

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Public Utility Law Project
of New York, Inc.

VIA ELECTRONIC MAIL

05/29/2025

Hon. Michaelle Solages
Legislative Office Building, Room 736
Albany, NY 12247

Hon. Kevin S. Parker
Capitol Building, Room 504
Albany, NY 12247

RE: A836 / S2411 - Utility Intervenor Reimbursement Legislation

Dear Senator Parker and Assemblymember Solages,

The Public Utility Law Project of New York ("PULP") writes today in support of legislation to allow nonprofits or groups of individuals to apply for the reimbursement of reasonable fees and other costs associated with participation in utility rate cases and other policy proceedings before the Public Service Commission ("PSC").

Now more than ever, residential and small business utility customers need an equal seat at the negotiation table in matters that affect the affordability and reliability of essential utility services. From 2016 through 2021, New York's investor-owned utility companies were allowed to bill their customers nearly *$19 million* to cover expenses for lawyers, consultants and expert witnesses.[1] Effectively, these companies that are already well funded spend millions of dollars *collected from ratepayers* to argue before regulators to raise rates on those same customers.

The results speak for themselves. To provide just one example, Con Edison, the largest utility in the state, and the Department of Public Service ("DPS") struck a deal in March 2023 that would raise customer bills by $3.9 billion over the next three years and direct hundreds of millions of dollars toward the expansion of fossil fuel infrastructure.[2] PULP and other intervenors were active parties to the Con Edison rate case. Collectively, we worked diligently to elevate the

[1] *See*, "The Great Utility Ratepayer Divide," AARP-NY, October 12, 2022, https://aarpstates.brightspotcdn.com/8c/db/df624d0845a8888eed76832e8470/the-great-utility-rate-payer-divide-10- 12-22.pdf
[2] *See*, Joint Proposal, Cases 22-E-0064 & 22-G-0065.

voices of the financially vulnerable and disadvantaged and attempted to avert the harmful potential rate increase. But despite some small victories in the form of new consumer protections, it is evident that long term consumer and climate interests are not being adequately considered nor protected under the current status quo.

More recently, in contrast, small intervenors have played an outsized and instrumental role in the creation of significant consumer protections and new affordability programs. For instance, PULP's participation in the 2023-24 Veolia Water Co. rate case was crucial to establish the state's inaugural monthly low-income water bill discount program for customers within the Company's service territory.[3] This landmark program represents a significant step forward to ensure equitable access to essential water services and illustrates the positive impact that dedicated consumer advocates can have in these proceedings.

The proper functioning of the regulatory process depends on a vigorous representation of consumers that is separate from and independent of the regulatory body, but these proceedings are often long, costly, and legally complicated. Intervenor funding is a commonsense way to level that playing field for residential and small business utility consumers and to make the process as a whole more equitable.

This legislation would provide residential households and small business customers with a necessary and independent voice in the discussions that lower rate increases, enhance customer service, and improve benefit programs. It would help support the organizations and groups that already do participate on behalf of consumers and foster the participation of new stakeholders who bring a fresh perspective, improve transparency and accountability, and ultimately create a better outcome for the public.

Intervenor funding is tried, tested and proven to save ratepayers money. Sixteen states already have laws that authorize reimbursement programs, including six with active, effective programs: California, Wisconsin, Idaho, Michigan, Minnesota, and Oregon. A California intervenor group, The Utility Reform Network ("TURN") reportedly helped save ratepayers over $4.4 billion in just one rate case,[4] while costing ratepayers an average of $10 - $15 million per year for all the utility cases in which they intervene.[5]

We support this bill as a way to ensure that New Yorkers always have an advocate in their corner to fight for affordable rates and improved consumer protections.

[3] *See*, Order Adopting Joint Proposal as Modified and Establishing Rate Plan, Case 23-W-0111, at 55.
[4] *See*, "Stories of Impact" by The Utility Reform Network ("TURN") at https://www.turn.org/our-impact/stories-of-impact, in particular the Southern California Edison and Pacific Gas and Electric rate case.
[5] *See*, State Approaches to Intervenor Compensation, National Association of Regulatory Utility Commissioners, December 2021.

Thank you for your continued leadership on this issue. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Laurie Wheelock, Esq.
Executive Director and Counsel
The Public Utility Law Project of New York ("PULP")

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Public Utility Law Project
of New York, Inc.

VIA ELECTRONIC MAIL

05/29/2025

Hon. Shelley Mayer
Legislative Office Building, Room 509
Albany, NY 12247

Hon. Didi Barrett
Legislative Office Building, Room 724
Albany, NY 12247

RE: A1028 / S6557 – Setting A Rate of Return on Equity and Common Equity Ratio

Dear Senator Mayer and Assemblymember Barrett,

The Public Utility Law Project of New York ("PULP") writes today in support of your legislation to require certain utilities to adopt the common equity ratio and rate of return on equity authorized by the NYS Public Service Commission. It is PULP's belief that this will improve the affordability of utility service for millions of households in New York State.

As you know, New York's investor-owned utilities are afforded the ability to operate as monopolies in exchange for being regulated. An important aspect of utility regulation in New York involves placing limits on the profits they can generate, in large part by setting an authorized "return on equity", or "ROE". However, for decades, authorized ROEs have mostly been decided that are fixed for multi-year periods ("rate plans") through settlements in Public Service Commission ("PSC") rate case proceedings. Setting the ROE during the rate case settlement process lacks public transparency. Moreover, once set, there is no opportunity to adjust authorized ROEs to account for changes in economic and/or financial conditions during rate plans. The result is that New Yorkers have been paying much more for their utility service than would have been the case had authorized ROEs been updated annually.

PULP believes that your legislation would ensure that New Yorker's pay no more in profits to their utilities than what is required to provide safe and reliable service, while offering the utilities the opportunity to earn a fair return on their investments. The Act would require the PSC to conduct an annual "update" proceeding that would forecast utility ROEs for the following year, and "true-up" forecasted ROEs from the preceding year to account for the economic and

financial conditions that actually unfolded. The Act would also improve transparency by requiring the Department of Public Service ("DPS") to present a pre-released annual report at a hearing of the Legislature on the methodology the PSC used to set ROEs for each utility. Members would be afforded the opportunity to issue information requests to DPS prior to the hearing, engage in a question-and-answer session at the hearing, and follow up afterward with any further information requests about the PSC's ROE-related activities for the year.

As an example of the benefits to ratepayers that could be achieved by adopting such a process, PULP notes that Con Edison ratepayers could have saved up to $1.8 billion from 2010 through 2022 by having the Company's ROE updated annually, instead of having set fixed multi-year ROEs in four rate cases during the period.[1]

Thank you for your leadership on this issue. As always, please do not hesitate to contact us if you have any questions.

Sincerely,

Laurie Wheelock, Esq.
Executive Director and Counsel
Public Utility Law Project of New York

[1] *See*, Case 22-E-0064 and 22-G-0065, PULP Statement of Opposition to Approval of the Joint Proposal, at 7-14.

Public Utility Law Project
of New York, Inc.

VIA ELECTRONIC MAIL

September 17, 2025

Hon. Kathy Hochul, Governor
State Capitol Building
Albany, NY 12224

Attention: Denise Gagnon, Legislative Secretary to the Governor

RE: A2468 (Dinowitz) / S6277 (Scarcella-Spanton) – Establishes a State Office of the Utility Consumer Advocate

Dear Governor Hochul,

The Public Utility Law Project of New York ("PULP") writes today in support of legislation to establish an independent State Office of the Utility Consumer Advocate ("UCA").

As utility rates continue to rise and the energy landscape grows increasingly complex, everyday New Yorkers need a dedicated, independent voice before the Public Service Commission. Today, the balance of power in rate cases and other proceedings is tilted heavily against consumers: utilities devote millions of ratepayer dollars to lawyers, consultants, and expert witnesses in pursuit of higher rates,[1] while large commercial and industrial customers also maintain a strong and well-resourced presence. By contrast, individual households rarely have the capacity or expertise to participate meaningfully.

The proper functioning of the regulatory process depends on vigorous representation of consumers that is separate from and independent of the regulatory body. Yet these proceedings are long, costly, and legally complex, making it unrealistic for households to engage on equal footing without a dedicated advocate. An independent UCA with the expertise and authority to intervene in these cases would correct this imbalance and help ensure that residential customers are represented as forcefully as utilities and other major stakeholders in decisions that directly affect their household budgets and access to essential utility services.

[1] See, The Great Utility Ratepayer Divide, AARP New York, October 12, 2022, at https://states.aarp.org/new-york/new-report-asks-answers-the-19-million-question-why-are-consumers-losing-nys-utility-price-game.

Although prior veto messages have suggested that creating an independent UCA would be duplicative of existing state entities, PULP believes this critique is misplaced. Both the Department of Public Service ("DPS") and the Department of State's Utility Intervention Unit ("UIU") are charged with representing all utility customers. These dual mandates are inherently in conflict, since the interests of residential and commercial customers often diverge. Additionally, DPS staff are also explicitly tasked with protecting the financial health of utilities, a responsibility that also often directly conflicts with affordability for consumers. Meanwhile, the UIU is administratively subordinate and lacks the statutory independence to act solely in the interests of residential customers.

By contrast, the independent UCA established under this legislation would be appointed to a six-year term and tasked exclusively with representing residential customers. Far from duplicating existing efforts, it would fill the structural gap that has left households underrepresented for decades. PULP believes this independence matters, as the UCA would be able to intervene in cases without having to reconcile competing commercial interests, without deference to other state agencies, and without the obligation to weigh the financial outcomes for utilities against the affordability of service for consumers.

Lastly, the experience of other states demonstrates the value of such an office. In California, for example, the Public Advocates Office secured nearly $2.3 billion in savings in the San Diego Gas & Electric and Southern California Gas rate cases,[2] as well as $532 million over three years in four major water utility cases.[3] These outcomes illustrate the powerful impact an independent consumer advocate can achieve, delivering billions in savings while safeguarding the affordability and reliability of essential utility services. Even if New York only achieved a fraction of these results, the substantial benefit for consumers far outweighs the modest resources required to maintain such an office.

PULP supports this legislation to ensure that everyday New Yorkers always have an advocate in their corner to fight for affordable rates and improved consumer protections.

Thank you for your continued leadership on behalf of utility consumers. If you have any questions or would like to discuss this matter further, please do not hesitate to contact us.

Sincerely,

Laurie Wheelock
Executive Director and Counsel
Public Utility Law Project ("PULP")

[2] See, 2024 Annual Report, the Consumer Advocate at the California Public Utilities Commission, page 9, at https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/press-room/reports-and-analyses/annual-reports/2024-public-advocates-office-annual-report.pdf.
[3] Id, at 16.