



Honorable Andrew Cuomo  
Governor, State of New York  
NYS State Capitol Building  
Executive Chamber  
Albany, NY 12224

January 20, 2021

Dear Governor Cuomo:

New Yorkers for Affordable Energy is a coalition of community, labor, business and industry leaders from across the state who support greater access to clean, reliable and affordable sources of energy for residential and business consumers. We are contacting your office to voice our opposition to the Act to Reform the Enforcement, Oversight and Franchise Revocation Process for Public Utilities and encourage you not to include this language in your forthcoming state budget proposal. This bill amends Public Service Law Section 25, 25-a and adds section 25-b significantly expanding authority given to the Department of Public Service (DPS) and allows the DPS to impose heavy penalties with no due process, based on 20/20 hindsight, while providing no guidance or objective criteria by which to measure utility performance.

Adopting this proposal does nothing to encourage thoughtful investment in cost-effective measures that improve overall reliability. Instead, it massively increases a utility's risk of doing business in New York, ultimately leading to higher costs for businesses and consumers as utilities scramble to predict new operations expectations. Higher utility costs will be unavoidable, crushing the state's economic competitiveness in one of the most trying economic times New York State has ever faced. Current law requires utilities to "reasonably comply" with the Public Service Law. This proposal removes the term "reasonably" and eliminates the due process that is currently afforded utilities, which will inevitably lead to fines and penalties for any effort subjectively determined to not "comply" with the law.

Under current law, utilities are held accountable, but in a transparent and orderly fashion. To commence a formal hearing against utilities, the PSC must issue an "Order

to Show Cause"- something it has not hesitated to do- and require the utility to respond publicly. This proposal removes the "Order to Show Cause" requirement and allows DPS to begin a penalty proceeding without input from the PSC or company. This elimination of due process for the utility serves no real purpose and will lead to diminished transparency and inconsistent oversight - things our state government should avoid.

Another significant problem with this legislation is that fails to take into account the fact that each industry -and each individual utility- has unique infrastructure and varying vulnerability to storm damage. For example, natural gas infrastructure is below grade and hardened against storms, while much of the electric infrastructure is not. Electric utilities may reap reliability benefits from additional redundancy, while the greatest challenge for gas utilities is a lack of supply. Failing to make such important distinctions could have unintended consequences, such as inducing natural gas utilities to make investments in system redundancy, resulting in higher rates but no commensurate benefit to consumers. Surely, this sort of blanket approach to legislation will drive business from the state rather than attract it. New York would be better served by having its regulatory bodies engage in meaningful discussions with utilities and making the state's expectations clear.

The negative impact of this proposal is already being felt. Moody's Investor Service recently noted that "The proposal is credit negative for all New York utilities because it represents the latest in a series of actions by the governor's office to intervene in utility regulation, which undermines the consistency and predictability of the state's regulatory framework."

The PSC already has the authority to investigate, audit, and, if appropriate, impose penalties on poorly maintained or unsafe utilities. Allow them to continue to do their job.

We respectfully request that you do not include the Act to Reform the Enforcement, Oversight and Franchise Revocation Process for Public Utilities in your Executive Budget. Thank you for your consideration.

Sincerely,

New Yorkers for Affordable Energy

[www.NY4AffordableEnergy.com](http://www.NY4AffordableEnergy.com)

CC: Assembly Member Amy Paulin

Special Council to Governor Cuomo, Beth Garvey