

# S.4960 (Mayer) / A.7065 (Otis)

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<b>BILL</b> S.4960 (Mayer) / A.7065 (Otis)
<b>SUBJECT</b> Utility Storm Response
<b>DATE</b> May 21, 2021
<b>OPPOSE</b>

The Business Council of New York State opposes S.4960 (Mayer) / A.7065 (Otis), which would seek to expand, and significantly increase, penalties the Public Service Commission (PSC) would be able to impose on investor-owned utilities and expand this enforcement authority to cover telecommunications, cable and private water companies. For several reasons we believe this bill is fundamentally flawed, overbroad, and would not further the sponsors' intent of streamlining the process of responding to serious weather-related events.

The purpose of this legislation, according to the sponsors' memorandum in support, is to "incentivize better regulatory compliance by utilities through increased flexibility for the PSC to assess penalties on utilities for violations of the public service law, and by expanding emergency response plan requirements". Instead, this bill seems to expose a fundamental problem with the State's regulatory and oversight structures.

Current law already provides the PSC with broad the authority to penalize combination gas and electric utilities for non-compliance with established regulations. Penalties are based on (i) the seriousness of the violation, (ii) whether the entity or officers have committed repeated violations, (iii) whether the entity or officer(s) knew of the existence of a violation, (iv) the entity's gross revenues and financial status, and (v) such "other factors as the commission may deem appropriate and relevant." To commence a formal proceeding, the PSC would issue an "Order to Show Cause", which requires a combination gas and electric utility to publicly respond to the allegations levied against it. Over the past decade, significant penalties have been imposed on combination utilities, yet storm response remains a contentious and complicated issue. Plainly, the imposition of penalties alone has not rectified concerns, and it is difficult to imagine that merely increasing penalties will somehow produce a markedly different outcome.

This bill would create a new Section 25-b in the Public Service Law to include electric and gas-only utilities as well as telecommunications companies under PSC's enforcement jurisdiction, representing a dramatic expansion of the Commission's current regulatory authority.

We see no need for this expansion.

First, gas utilities have no established record of service outages during major storm events despite the State's largest gas utility being located in western New York, a region that experiences more annual snow accumulation than any other. Second, enforcement and penalties would apply in equal force to cable television companies and cable systems as well as telephone corporations. Last, cable and telecommunication providers are not 'rate of return' regulated by the PSC, meaning any build out of cable, broadband or telephone networks are done without ratepayer subsidies nor a guaranteed a rate of return.

Further, currently Section 25 of the Public Service Law provides utilities with the ability to demonstrate "reasonable" compliance with regulatory directives. Superficially this might appear to be a minor statutory amendment, but it carries significant ramifications. The purpose of allowing a demonstration of "reasonable" compliance is to ensure that, while a violation may have perhaps occurred, the underlying intent or a law or regulation was ultimately achieved. As an example, if an emergency response plan (ERP) mandated that call centers be staffed with an exact number of representatives and in the event the threshold is not met, for whatever reason, the failure to strictly comply with the specific terms of the ERP would warrant the imposition of a penalty regardless of whether the underlying purpose of the provision (i.e. proving timely and responsive customer service) was achieved. Striking the word "reasonable" essentially creates a strict liability standard that would both eliminate the possibility of settlement and result in prolonged and costly litigation.

The Business Council suggests that the focus should not be on punishing non-compliance but rather catalyzing long-term hardening of critical infrastructure, which requires meaningful collaboration between state government, utilities, stakeholders, local officials, and regulators. In isolation, the components of the bill that require the development of ERPs for severe weather-related service disruptions is a step in the right direction. In fact, in 2019 utilities filed ERPs responsive to a PSC directive which set forth many of the same elements required by this legislation. However, those plans have not yet been approved, despite several major weather having occurred since then. This bill unfortunately does not require the PSC to promptly review and approve a submitted ERP which, based on experience from 2019, makes this provision largely ineffective.

It is for the above reasons that the Business Council strongly opposes the enactment of S.4960 (Mayer) / A.7065 (Otis).