S T A T E O F N E W Y O R K

2442--C

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. DESTITO, BENEDETTO, LUPARDO -- read once and referred to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and public authorities law, in relation to the net energy metering for micro-combined heat and power generating systems

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 66-j of the public service law, as added by chapter 399 of the laws of 1997, the section heading, paragraphs (a), (d) and (e) of subdivision 1, subdivision 2, paragraphs (a), (b) and (c) of subdivision 3, paragraphs (c) and (d) of subdivision 4 as amended and subdivision 5-a as added by chapter 452 of the laws of 2008, subdivisions 1, 3, 4 and 5 as amended by chapter 515 of the laws of 2002, and paragraph (b) and the opening paragraph of paragraph (e) of subdivision 1 as amended by chapter 480 of the laws of 2008, is amended to read as follows:

S 66-j. Net energy metering for residential solar, farm waste [or], non-residential solar electric generating systems, MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT, OR FUEL CELL ELECTRIC GENERATING EQUIPMENT. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Customer-generator" means: (i) a residential customer of an electric corporation, who owns or operates solar electric generating equipment located and used at his or her residence; (ii) a customer of an electric corporation, who owns or operates farm waste electric generating equipment located and used at his or her "farm operation," as such term is defined in subdivision eleven of section three hundred one of the agriculture and markets law; [and] (iii) a non-residential customer of an electric corporation which owns or operates solar electric gener-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD03886-06-9

ating equipment located and used at its premises; (IV) A RESIDENTIAL CUSTOMER OF AN ELECTRIC CORPORATION WHO OWNS, LEASES OR OPERATES MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT LOCATED ON THE CUSTOMER'S PREMISES; AND (V) A RESIDENTIAL CUSTOMER OF AN ELECTRIC CORPORATION WHO OWNS, LEASES OR OPERATES FUEL CELL GENERATING EQUIPMENT LOCATED ON THE CUSTOMER'S PREMISES.

(b) "Net energy meter" means a meter that measures the reverse flow of electricity to register the difference between the electricity supplied by an electric corporation to the customer-generator and the electricity provided to the corporation by that customer-generator.

(c) "Net energy metering" means the use of a net energy meter to measure, during the billing period applicable to a customer-generator, the net amount of electricity supplied by an electric corporation and provided to the corporation by a customer-generator.

(d) "Solar electric generating equipment" means a photovoltaic system (i) (A) in the case of a residential customer, with a rated capacity of not more than twenty-five kilowatts; and (B) in the case of a non-residential customer, with a rated capacity of not more than the lesser of two thousand kilowatts or such customer's peak load as measured over the prior twelve month period, or in the case that such twelve month period of measurement is not available, then as determined by the commission based on its analysis of comparable facilities; and (ii) that is manufactured, installed, and operated in accordance with applicable government and industry standards, that is connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, and that is operated in compliance with any standards and requirements established under this section.

(e) "Farm waste electric generating equipment" means equipment that generates electric energy from biogas produced by the anaerobic digestion of agricultural waste, such as livestock manure, farming wastes and food processing wastes with a rated capacity of not more than five hundred kilowatts, that is:

[i.] (I) manufactured, installed, and operated in accordance with applicable government and industry standards;

[ii.] (II) connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities;

[iii.] (III) operated in compliance with any standards and requirements established under this section;

[iv.] (IV) fueled at a minimum of ninety percent on an annual basis by biogas produced from the anaerobic digestion of agricultural waste such as livestock manure materials, crop residues, and food processing waste; and

[v.] (V) fueled by biogas generated by anaerobic digestion with at least fifty percent by weight of its feedstock being livestock manure materials on an annual basis.

(F) "MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT" MEANS AN INTEGRATED, COGENERATING BUILDING HEATING AND ELECTRICAL POWER GENERATION SYSTEM, OPERATING ON ANY FUEL AND OF ANY APPLICABLE ENGINE, FUEL CELL, OR OTHER TECHNOLOGY, WITH A RATED CAPACITY OF AT LEAST ONE KILOWATT AND NOT MORE THAN TEN KILOWATTS ELECTRIC AND ANY THERMAL OUTPUT THAT AT FULL LOAD HAS A DESIGN TOTAL FUEL USE EFFICIENCY IN THE PRODUCTION OF HEAT AND ELECTRICITY OF NOT LESS THAN EIGHTY PERCENT, AND ANNUALLY PRODUCES AT LEAST TWO THOUSAND KILOWATT HOURS OF USEFUL ENERGY IN THE FORM OF ELECTRICITY THAT MAY WORK IN COMBINATION WITH SUPPLEMENTAL OR PARALLEL CONVENTIONAL HEATING SYSTEMS, THAT IS MANUFACTURED,

INSTALLED AND OPERATED IN ACCORDANCE WITH APPLICABLE GOVERNMENT AND INDUSTRY STANDARDS, THAT IS CONNECTED TO THE ELECTRIC SYSTEM AND OPERATED IN CONJUNCTION WITH AN ELECTRIC CORPORATION'S TRANSMISSION AND DISTRIBUTION FACILITIES.

(G) "FUEL CELL ELECTRIC GENERATING EQUIPMENT" MEANS A SOLID OXIDE, MOLTEN CARBONATE, PROTON EXCHANGE MEMBRANE OR PHOSPHORIC ACID FUEL CELL WITH A COMBINED RATED CAPACITY OF NOT MORE THAN TEN KILOWATTS THAT IS MANUFACTURED, INSTALLED AND OPERATED IN ACCORDANCE WITH APPLICABLE GOVERNMENT AND INDUSTRY STANDARDS, THAT IS CONNECTED TO THE ELECTRIC SYSTEM AND OPERATED IN PARALLEL WITH AN ELECTRIC CORPORATION'S TRANSMISSION AND DISTRIBUTION FACILITIES, AND THAT IS OPERATED IN COMPLIANCE WITH ANY STANDARDS AND REQUIREMENTS ESTABLISHED UNDER THIS SECTION.

2. Interconnection and net energy metering. An electric corporation shall provide for the interconnection of solar and farm waste electric generating equipment, MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT AND FUEL CELL ELECTRIC GENERATING EQUIPMENT owned or operated by a customer-generator and for net energy metering, provided that the customer-generator enters into a net energy metering contract with the corporation or complies with the corporation's net energy metering schedule and complies with standards and requirements established under this section.

3. Conditions of service. (a) (i) On or before three months after the effective date of this section, each electric corporation shall develop a model contract and file a schedule that establishes consistent and reasonable rates, terms and conditions for net energy metering to customer-generators, according to the requirements of this section. The commission shall render a decision within three months from the date on which the schedule is filed.

(ii) On or before three months after the effective date of this subparagraph, each electric corporation shall develop a model contract and file a schedule that establishes consistent and reasonable rates, terms and conditions for net energy metering to non-residential customer generators, according to the requirements of this section. The commission shall render a decision within three months of the date on which the schedule is filed.

(iii) Each electric corporation shall make such contract and schedule available to customer-generators on a first come, first served basis, until the total rated generating capacity for solar and farm waste electric generating equipment, MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT AND FUEL CELL ELECTRIC GENERATING EQUIPMENT owned, LEASED or operated by customer-generators in the corporation's service area is equivalent to one percent of the corporation's electric demand for the year two thousand five, as determined by the department.

(b) Nothing in this subdivision shall prohibit a corporation from providing net energy metering to additional customer-generators. The commission shall have the authority, after January first, two thousand twelve, to increase the percent limits if it determines that additional net energy metering is in the public interest.

(c) In the event that the electric corporation determines that it is necessary to install a dedicated transformer or transformers, or other equipment to protect the safety and adequacy of electric service provided to other customers, a customer-generator shall pay the electric corporation's actual costs of installing the transformer or transformers, or other equipment:

(i) In the case of a customer-generator who owns or operates solar electric generating equipment, MICRO-COMBINED HEAT AND POWER GENERATING

EQUIPMENT OR FUEL CELL ELECTRIC GENERATING EQUIPMENT located and used at his or her residence[;], up to a maximum amount of three hundred fifty dollars[.];

(ii) In the case of a customer-generator who owns or operates farm waste electric generating equipment located and used at his or her "farm operation," up to a total amount of five thousand dollars per "farm operation"[.]; AND

(iii) In the case of a non-residential customer-generator who owns or operates solar electric generating equipment located and used at its premises, such cost shall be as determined by the department pursuant to standards established thereby.

(d) An electric corporation shall impose no other charge or fee, including back-up, stand by and demand charges, for the provision of net energy metering to a customer-generator, except as provided in paragraph (d) of subdivision four of this section.

4. Rates. An electric corporation shall use net energy metering to measure and charge for the net electricity supplied by the corporation and provided to the corporation by a customer-generator, according to these requirements:

(a) In the event that the amount of electricity supplied by the corporation during the billing period exceeds the amount of electricity provided by a customer-generator, the corporation shall charge the customer-generator for the net electricity supplied at the same rate per kilowatt hour applicable to service provided to other customers in the same service class which do not generate electricity onsite.

(b) In the event that the amount of electricity produced by a customer-generator during the billing period exceeds the amount of electricity used by the customer-generator, the corporation shall apply a credit to the next bill for service to the customer-generator for the net electricity provided at the same rate per kilowatt hour applicable to service provided to other customers in the same service class which do not generate electricity onsite, EXCEPT FOR MICRO-COMBINED HEAT AND POWER OR FUEL CELL CUSTOMER-GENERATORS, WHO WILL BE CREDITED AT THE CORPORATION'S AVOIDED COSTS. THE AVOIDED COST CREDIT PROVIDED TO MICRO-COMBINED HEAT AND POWER OR FUEL CELL CUSTOMER-GENERATORS SHALL BE TREATED FOR RATEMAKING PURPOSES AS A PURCHASE OF ELECTRICITY IN THE MARKET THAT IS INCLUDABLE IN COMMODITY COSTS.

(c) At the end of the year or annualized over the period that service is supplied by means of net energy metering, the corporation shall promptly issue payment at its avoided cost to the customer-generator, as defined in subparagraph (i) or (ii) of paragraph (a) of subdivision one of this section, for the value of any remaining credit for the excess electricity produced during the year or over the annualized period by the customer-generator.

(d) In the event that the corporation imposes charges based on kilowatt demand on customers who are in the same service class as the customer-generator but which do not generate electricity on site, the corporation may impose the same charges at the same rates to the customer-generator, provided, however, that the kilowatt demand for such demand charges is determined by the maximum measured kilowatt demand actually supplied by the corporation to the customer-generator during the billing period.

5. Safety standards. (a) On or before three months after the effective date of this section, each electric corporation shall establish standards that are necessary for net energy metering and the interconnection of residential solar or farm waste electric generating equipment,

MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT AND FUEL CELL ELECTRIC GENERATING EQUIPMENT to its system and that the commission shall determine are necessary for safe and adequate service and further the public policy set forth in this section. Such standards may include but shall not be limited to:

(i) equipment necessary to isolate automatically the residential solar [and], farm waste, MICRO-COMBINED HEAT AND POWER AND FUEL CELL ELECTRIC generating system from the utility system for voltage and frequency deviations; and

(ii) a manual lockable disconnect switch provided by the customer-generator which shall be located on the outside of the customer's premises and externally accessible for the purpose of isolating the residential solar and farm waste electric generating equipment.

(b) Upon its own motion or upon a complaint, the commission, or its designated representative, may investigate and make a determination as to the reasonableness and necessity of the standards or responsibility for compliance with the standards.

(i) In the case of a customer-generator who owns or operates solar electric generating equipment located and used at his or her residence; an electric corporation may not require a customer-generator to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance provided that the residential solar or farm waste electric generating equipment, MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT OR FUEL CELL ELECTRIC GENERATING EQUIPMENT meets the safety standards established pursuant to this paragraph.

(ii) In the case of a customer-generator who owns or operates farm waste electric generating equipment located and used at his or her "farm operation," an electric corporation may not require a customer-generator to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance provided that:

1. the electric generating equipment meets the safety standards established pursuant to this paragraph; and

2. the total rated generating capacity (measured in kW) of farm waste electric generating equipment that provides electricity to the electric corporation through the same local feeder line, does not exceed twenty percent of the rated capacity of that local feeder line.

(iii) In the event that the total rated generating capacity of farm waste electric generating equipment that provides electricity to the electric corporation through the same local feeder line exceeds twenty percent of the rated capacity of the local feeder line, the electric corporation may require the customer-generator to comply with reasonable measures to ensure safety of that local feeder line.

5-a. Safety standards; non-residential solar electric generating equipment. (a) On or before three months after the effective date of this subdivision, each electric corporation shall establish standards that are necessary for net energy metering and the interconnection of non-residential solar electric generating equipment to its system and that the commission shall determine are necessary for safe and adequate service and further the public policy set forth in this section. Such standards may include but shall not be limited to:

(i) equipment necessary to isolate automatically the solar generating system from the utility system for voltage and frequency deviations; and

(ii) a manual lockable disconnect switch provided by the customer-generator which shall be located on the outside of the customer-generator's

premises and externally accessible for the purpose of isolating the solar electric generating equipment.

(b) In the event that the total rated generating capacity of solar electric generating equipment that provides electricity to the electric corporation through the same local feeder line exceeds twenty percent of the rated capacity of the local feeder line, the electric corporation may require the customer-generator to comply with reasonable measures to ensure safety of the local feeder line.

(c) Unless otherwise determined to be necessary by the commission, an electric corporation may not require a customer-generator to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance provided that the solar electric generating equipment meets the safety standards established pursuant to this subdivision.

(d) Upon its own motion or upon a complaint, the commission, or its designated representative, may investigate and make a determination as to the reasonableness and necessity of the standards or responsibility for compliance with the standards.

6. Electric restructuring. Notwithstanding the provisions of this section, including, but not limited to paragraph (b) of subdivision three of this section, a customer-generator shall comply with any applicable determinations of the commission relating to restructuring of the electric industry.

7. Severability of provisions. The provisions of this section shall be severable and if the application of any clause, sentence, paragraph, subdivision, section, or part thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not necessarily affect, impair, or invalidate the application of any such clause, sentence, paragraph, subdivision, section, part or remainder thereof, as the case may be, to any other person, circumstance, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 2. Subdivision (h) of section 1020-g of the public authorities law, as amended by chapter 452 of the laws of 2008, is amended to read as follows:

(h) To implement programs and policies designed to provide for the interconnection of: (i) (A) solar electric generating equipment owned or operated by residential customers, (B) farm waste electric generating equipment owned or operated by customer-generators, [and] (C) solar electric generating equipment owned or operated by non-residential customers, (D) MICRO-COMBINED HEAT AND POWER GENERATING EQUIPMENT OWNED, LEASED OR OPERATED BY RESIDENTIAL CUSTOMERS, AND (E) FUEL CELL ELECTRIC GENERATING EQUIPMENT OWNED, LEASED OR OPERATED BY RESIDENTIAL CUSTOMERS, and for net energy metering consistent with section sixty-six-j of the public service law, to increase the efficiency of energy end use, to shift demand from periods of high demand to periods of low demand and to facilitate the development of cogeneration; and (ii) wind electric generating equipment owned or operated by customer-generators and for net energy metering consistent with section sixty-six-l of the public service law.

S 3. This act shall take effect immediately.