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

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 17, 2009

Introduced by M. of A. ORTIZ, COLTON -- Multi-Sponsored by -- M. of A. BRENNAN, DIAZ, REILLY, ROBINSON -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to smart grid systems

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

Section 1. The public authorities law is amended by adding a new title 13 to article 5 to read as follows:

TITLE 13
NEW YORK STATE SMART GRID SYSTEMS

SECTION 1349-A. LEGISLATIVE INTENT.
1349-B. DEFINITIONS.
1349-C. RECOVERING COSTS.
1349-D. DEPLOYMENT PLAN.
1349-E. ECONOMIC INCENTIVES.
1349-F. INSTALLATION.
1349-G. ELECTRICAL CORPORATION.
1349-H. PROHIBITED REGULATION.

S 1349-A. LEGISLATIVE INTENT. THE LEGISLATURE FINDS AND DECLARES ALL OF THE FOLLOWING:

1. SMART GRID SYSTEMS THAT ALLOW REAL-TIME, TWO-WAY DIGITAL COMMUNICATIONS BETWEEN ELECTRIC UTILITIES AND THEIR DISTRIBUTION GRID AND WITH THEIR CUSTOMERS CAN GREATLY IMPROVE THE EFFICIENCY AND RELIABILITY OF ELECTRICAL DISTRIBUTION SYSTEMS AND FACILITATE CONSERVATION BY ENABLING REAL-TIME DEMAND RESPONSE PRICING.

2. SMART GRID SYSTEMS CONSTITUTE CRITICAL INFRASTRUCTURE THAT CAN SUPPORT IMPORTANT HOMELAND SECURITY NEEDS, BOTH BY PROVIDING DISASTER

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

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PREVENTION AND RECOVERY CAPABILITIES TO PROTECT THE STATE'S ELECTRIC GRID AND BY ENABLING REMOTE MONITORING OF OTHER CRITICAL INFRASTRUCTURE AND KEY ASSETS.

3. SMART GRID SYSTEMS WILL PERMIT THE STATE TO TAKE FULL ADVANTAGE OF DISTRIBUTED GENERATION RESOURCES THAT WILL INCREASE DISTRIBUTION EFFICIENCY, LOWER CUSTOMER PRICES, STIMULATE INNOVATION AND NEW JOB CREATION, AND ULTIMATELY REDUCE EMISSIONS OF GREENHOUSE GASES AND DECREASE DEPENDENCE ON FOREIGN OIL.

S 1349-B. DEFINITIONS. FOR PURPOSES OF THIS TITLE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

1. "ELECTRIC UTILITY" SHALL MEAN AN ELECTRICAL CORPORATION, ELECTRICAL COOPERATIVE, OR LOCAL PUBLICLY OWNED ELECTRIC UTILITY.

2. "ELECTRICAL DELIVERY SYSTEM" SHALL MEAN THOSE FACILITIES THAT ARE USED BY AN ELECTRICAL CORPORATION, ELECTRICAL COOPERATIVE, OR LOCAL PUBLICLY OWNED ELECTRIC UTILITY TO TRANSMIT, DELIVER, OR FURNISH ELECTRICITY TO RETAIL END-USE CUSTOMERS.

3. "SMART GRID SYSTEM" SHALL MEAN A TWO-WAY COMMUNICATIONS SYSTEM AND ASSOCIATED EQUIPMENT AND SOFTWARE, INCLUDING EQUIPMENT INSTALLED ON THE ELECTRICAL DELIVERY SYSTEM AND ON THE PREMISES OF RETAIL END-USE CUSTOMERS, THAT UTILIZES THE ELECTRICAL DELIVERY SYSTEM TO PROVIDE REAL-TIME MONITORING, DIAGNOSTIC, AND CONTROL INFORMATION AND SERVICES THAT IMPROVE THE EFFICIENCY AND RELIABILITY OF THE DISTRIBUTION AND USE OF ELECTRICITY, INCLUDING AUTOMATED LOAD CONTROL OR DEMAND RESPONSE, POWER LOSS DETECTION AND PREVENTION, REMOTE OUTAGE AND RESTORATION DETECTION, CONTINUOUS REPORTING OF UTILITY AND CUSTOMER DEMAND, DYNAMIC PRICING OF ELECTRICAL SERVICE, PERFORMANCE MONITORING OF ELECTRICAL DISTRIBUTION NETWORK EQUIPMENT, AND PREDICTIVE MAINTENANCE AND DIAGNOSTICS. AN ELECTRIC UTILITY MAY TREAT AN ELECTRICAL METER INSTALLED TO ENABLE THE ELECTRICAL DELIVERY SYSTEM TO FUNCTION PROPERLY AS BEING PART OF THE SMART GRID SYSTEM IF THE METER HAS THE CAPABILITY OF MEASURING AND RECORDING ELECTRICITY USAGE DATA ON A TIME-DIFFERENTIATED BASIS OF AT LEAST FIFTEEN MINUTE INTERVALS FOR AT LEAST FOUR SEPARATE TIME SEGMENTS PER DAY.

S 1349-C. RECOVERING COSTS. 1. IT IS THE POLICY OF THE STATE TO ENCOURAGE AND, WHERE APPROPRIATE, MANDATE THE UTILIZATION OF SMART GRID SYSTEMS BY ELECTRIC UTILITIES.

2. AN ELECTRIC UTILITY SHALL RECOVER ITS REASONABLE COSTS FOR PLANNING, BUILDING, AND OPERATING A SMART GRID SYSTEM FROM RATEPAYERS, INCLUDING ADMINISTRATIVE AND OPERATIONAL COSTS, COSTS FOR SERVICES RENDERED BY UTILITY EMPLOYEES, CONTRACTORS, AND SUBCONTRACTORS, CAPITAL INVESTMENT AND DEPRECIATION, TAXES, FINANCING, FINANCIAL INCENTIVES PAID TO CUSTOMERS FOR PARTICIPATION IN DEMAND RESPONSE, LOAD CONTROL, AND OTHER CONSERVATION PROGRAMS, AND MARKETING AND ADVERTISING COSTS FOR SUCH PROGRAMS.

3. AN ELECTRIC UTILITY SHALL RECOVER THE REASONABLE COSTS OF EQUIPMENT RENDERED OBSOLETE BY DEPLOYMENT OF A SMART GRID SYSTEM, BASED ON THE REMAINING DEPRECIABLE LIFE OF THE OBSOLETE EQUIPMENT.

4. AN ELECTRIC UTILITY SHALL NOT RECOVER THE COSTS OF EQUIPMENT OR SOFTWARE FROM RATEPAYERS UNLESS THE EQUIPMENT AND SOFTWARE IS COMPATIBLE WITH, AND CAPABLE OF INTEROPERATING WITH, A SMART GRID SYSTEM.

5. SUBDIVISION FOUR OF THIS SECTION DOES NOT APPLY IN THE FOLLOWING SITUATIONS: (A) THE ELECTRIC UTILITY HAS, PRIOR TO FEBRUARY TWENTY-SECOND, TWO THOUSAND EIGHT, ENTERED INTO A BINDING FINANCIAL COMMITMENT TO MAKE A PURCHASE OF, OR EXPENDITURE FOR, THE EQUIPMENT OR SOFTWARE THAT IS NOT COMPATIBLE WITH, OR CAPABLE OF INTEROPERATING WITH, A SMART GRID SYSTEM.

(B) THE EQUIPMENT OR SOFTWARE IS FOR PROVIDING SERVICE IN A GEOGRAPHICAL AREA WHERE THE DEMONSTRATED COST OF DEPLOYING A SMART GRID SYSTEM EXCEEDS THE REASONABLY ANTICIPATED BENEFITS OF DEPLOYMENT, INCLUDING BENEFITS TO THE UTILITY, RATEPAYERS, THE ENVIRONMENT, AND HOMELAND SECURITY.

S 1349-D. DEPLOYMENT PLAN. 1. EACH ELECTRIC UTILITY WITH MORE THAN TEN THOUSAND SERVICE CONNECTIONS SHALL DEVELOP AND ADOPT A SMART GRID SYSTEM DEPLOYMENT PLAN BY JUNE THIRTIETH, TWO THOUSAND TEN. AN ELECTRIC UTILITY WITH TEN THOUSAND OR FEWER SERVICE CONNECTIONS MAY ELECT TO DEVELOP AND ADOPT A SMART GRID SYSTEM DEPLOYMENT PLAN.

2. EACH ELECTRIC UTILITY SHALL, BY SEPTEMBER THIRTIETH, TWO THOUSAND TEN, ISSUE A SMART GRID SYSTEM REQUEST FOR PROPOSALS CONSISTENT WITH THE DEPLOYMENT PLAN. RESPONDENTS TO A REQUEST FOR PROPOSAL SHALL OFFER TO SERVE AT LEAST A MAJORITY OF THE ELECTRIC UTILITY'S RESIDENTIAL ELECTRIC SUBSCRIBERS.

3. UNLESS SUBDIVISION FOUR OF THIS SECTION IS APPLICABLE, AN ELECTRIC UTILITY SHALL MAKE A FINAL SELECTION OF A WINNING RESPONSE TO ITS SMART GRID SYSTEM REQUEST FOR PROPOSALS NO LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE DATE THE REQUEST FOR PROPOSALS IS ISSUED. ANY WINNING RESPONSE SELECTED SHALL PROPOSE TO CONSTRUCT A SMART GRID SYSTEM THAT PROVIDES SUFFICIENT CAPACITY AND CAPABILITIES TO MEET ANTICIPATED DEMANDS FOR MANAGEMENT AND CONTROL OF THE ELECTRIC UTILITY'S ELECTRICAL DELIVERY SYSTEM UNTIL AT LEAST DECEMBER THIRTY-FIRST, TWO THOUSAND TWENTY-FOUR.

4. AN ELECTRIC UTILITY MAY DECLINE TO SELECT A WINNING PROPOSAL ONLY IF THERE ARE NO PROPOSALS MEETING THE REQUIREMENTS OF THE REQUEST OR THE ELECTRIC UTILITY MAKES WRITTEN FINDINGS THAT THE COSTS TO IMPLEMENT ANY BIDS MEETING THE REQUIREMENTS OF THE PROPOSAL WOULD CLEARLY OUTWEIGH THE POTENTIAL BENEFITS OF DEPLOYING A SMART GRID SYSTEM, INCLUDING ENVIRONMENTAL BENEFITS AND DIRECT AND INDIRECT BENEFITS TO THE UTILITY'S RATEPAYERS.

S 1349-E. ECONOMIC INCENTIVES. 1. BY APRIL FIRST, TWO THOUSAND TEN, THE COMMISSION SHALL ESTABLISH RULES TO ENSURE THAT ELECTRICAL CORPORATIONS WITH MORE THAN TEN THOUSAND SERVICE CONNECTIONS HAVE ADEQUATE ECONOMIC INCENTIVES TO DEPLOY SMART GRID SYSTEMS. THE RULES SHALL ENCOURAGE ELECTRICAL CORPORATIONS TO DEPLOY SMART GRID SYSTEMS THAT HAVE SUFFICIENT CAPACITY AND CAPABILITIES TO MEET ANTICIPATED FUTURE DEMANDS FOR MANAGEMENT AND CONTROL OF THE ELECTRICAL DISTRIBUTION SYSTEM UNTIL AT LEAST DECEMBER THIRTY-FIRST, TWO THOUSAND TWENTY-FOUR. THE ECONOMIC INCENTIVES SHALL, FOR SMART GRID SYSTEMS DEPLOYED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHT, INCLUDE ONE OR MORE OF THE FOLLOWING:

(A) AN ENHANCED RETURN ON ITS REASONABLE CAPITAL EXPENDITURES AND ON A PORTION OF ITS REASONABLE OPERATIONS AND MAINTENANCE COSTS FOR A SMART GRID SYSTEM; OR

(B) RETENTION OF A PORTION OF ANY COST SAVINGS ATTRIBUTABLE TO THE USE OF A SMART GRID SYSTEM.

2. THE GOVERNING BOARD OF AN ELECTRIC UTILITY THAT IS NOT AN ELECTRICAL CORPORATION MAY ESTABLISH INCENTIVES TO DEPLOY SMART GRID SYSTEMS CONSISTENT WITH SUBDIVISION ONE OF THIS SECTION.

3. AN ELECTRICAL CORPORATION WITH TEN THOUSAND OR FEWER SERVICE CONNECTIONS MAY FILE AN APPLICATION WITH THE COMMISSION SEEKING AUTHORIZATION TO ESTABLISH INCENTIVES TO DEPLOY SMART GRID SYSTEMS CONSISTENT WITH SUBDIVISION ONE OF THIS SECTION.

S 1349-F. INSTALLATION. 1. AN ELECTRIC UTILITY OR ITS CONTRACTORS INSTALLING A SMART GRID SYSTEM SHALL BE PERMITTED ACCESS TO ANY POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY ON TERMS AND CONDITIONS AT LEAST AS

FAVORABLE AS THOSE GRANTED TO A HOLDER OF A STATE FRANCHISE. THE RIGHTS GRANTED BY THIS SECTION DO NOT LIMIT EITHER OF THE FOLLOWING:

(A) ANY RIGHT THAT A UTILITY OR THIRD PARTY INSTALLING A SMART GRID SYSTEM MAY HAVE TO ACCESS POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY PURSUANT TO CONTRACT OR UNDER ANY OTHER LAW; OR

(B) THE SERVICES THAT MAY BE OFFERED OVER A SMART GRID SYSTEM.

2. A SMART GRID SYSTEM IS AN INTEGRAL COMPONENT OF THE ELECTRICAL DELIVERY SYSTEM AND THE INSTALLATION OF A SMART GRID SYSTEM SHALL NOT REQUIRE AN ELECTRIC UTILITY OR ITS CONTRACTOR TO OBTAIN OR EXPAND EASEMENTS OR OTHER RIGHTS-OF-WAY OR TO PROVIDE ADDITIONAL CONSIDERATION AS A RESULT OF THE INSTALLATION OR OPERATION OF THE SMART GRID SYSTEM. INSTALLATION OF A SMART GRID SYSTEM IS CONSISTENT WITH, AND PART OF, THE INSTALLATION OF THE ELECTRICAL DISTRIBUTION SYSTEM.

S 1349-G. ELECTRICAL CORPORATION. AN ELECTRICAL CORPORATION MAY ELECT TO OWN AND OPERATE A SMART GRID SYSTEM ON ITS OWN ELECTRICAL DELIVERY SYSTEM, OR MAY PERMIT AN AFFILIATED OR UNAFFILIATED ENTITY TO OWN OR OPERATE THE SMART GRID SYSTEM.

S 1349-H. PROHIBITED REGULATION. A LOCAL MUNICIPALITY SHALL NOT PROHIBIT OR REGULATE EITHER OF THE FOLLOWING:

(A) THE INSTALLATION OR OPERATION OF A SMART GRID SYSTEM BY AN ELECTRICAL CORPORATION OR ELECTRICAL COOPERATIVE, OR A CONTRACTOR OR AFFILIATE, WITHIN THE SERVICE AREA OF THE ELECTRICAL CORPORATION OR ELECTRICAL COOPERATIVE; OR

(B) THE INSTALLATION OR OPERATION OF A SMART GRID SYSTEM BY A LOCAL PUBLICLY OWNED ELECTRIC UTILITY, OR A CONTRACTOR, WITHIN THE SERVICE AREA OF THE UTILITY, WHEN APPROVED BY THE GOVERNING BOARD OF THE UTILITY.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.