

1656

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. ORTIZ, COLTON -- Multi-Sponsored by -- M. of A. BRENNAN, 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:

1 Section 1. The public authorities law is amended by adding a new title
2 13 to article 5 to read as follows:

3 TITLE 13
4 NEW YORK STATE SMART GRID SYSTEMS

5 SECTION 1349-A. LEGISLATIVE INTENT.
6 1349-B. DEFINITIONS.
7 1349-C. RECOVERING COSTS.
8 1349-D. DEPLOYMENT PLAN.
9 1349-E. ECONOMIC INCENTIVES.
10 1349-F. INSTALLATION.
11 1349-G. ELECTRICAL CORPORATION.
12 1349-H. PROHIBITED REGULATION.

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

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

20 2. SMART GRID SYSTEMS CONSTITUTE CRITICAL INFRASTRUCTURE THAT CAN
21 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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1 PREVENTION AND RECOVERY CAPABILITIES TO PROTECT THE STATE'S ELECTRIC
2 GRID AND BY ENABLING REMOTE MONITORING OF OTHER CRITICAL INFRASTRUCTURE
3 AND KEY ASSETS.

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

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

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

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

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

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

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

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

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

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

1 (B) THE EQUIPMENT OR SOFTWARE IS FOR PROVIDING SERVICE IN A GEOGRAPH-
2 ICAL AREA WHERE THE DEMONSTRATED COST OF DEPLOYING A SMART GRID SYSTEM
3 EXCEEDS THE REASONABLY ANTICIPATED BENEFITS OF DEPLOYMENT, INCLUDING
4 BENEFITS TO THE UTILITY, RATEPAYERS, THE ENVIRONMENT, AND HOMELAND SECUR-
5 ITY.

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

11 2. EACH ELECTRIC UTILITY SHALL, BY SEPTEMBER THIRTIETH, TWO THOUSAND
12 TWELVE, ISSUE A SMART GRID SYSTEM REQUEST FOR PROPOSALS CONSISTENT WITH
13 THE DEPLOYMENT PLAN. RESPONDENTS TO A REQUEST FOR PROPOSAL SHALL OFFER
14 TO SERVE AT LEAST A MAJORITY OF THE ELECTRIC UTILITY'S RESIDENTIAL ELEC-
15 TRIC SUBSCRIBERS.

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

24 4. AN ELECTRIC UTILITY MAY DECLINE TO SELECT A WINNING PROPOSAL ONLY
25 IF THERE ARE NO PROPOSALS MEETING THE REQUIREMENTS OF THE REQUEST OR THE
26 ELECTRIC UTILITY MAKES WRITTEN FINDINGS THAT THE COSTS TO IMPLEMENT ANY
27 BIDS MEETING THE REQUIREMENTS OF THE PROPOSAL WOULD CLEARLY OUTWEIGH THE
28 POTENTIAL BENEFITS OF DEPLOYING A SMART GRID SYSTEM, INCLUDING ENVIRON-
29 MENTAL BENEFITS AND DIRECT AND INDIRECT BENEFITS TO THE UTILITY'S RATE-
30 PAYERS.

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

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

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

46 2. THE GOVERNING BOARD OF AN ELECTRIC UTILITY THAT IS NOT AN ELEC-
47 TRICAL CORPORATION MAY ESTABLISH INCENTIVES TO DEPLOY SMART GRID SYSTEMS
48 CONSISTENT WITH SUBDIVISION ONE OF THIS SECTION.

49 3. AN ELECTRICAL CORPORATION WITH TEN THOUSAND OR FEWER SERVICE
50 CONNECTIONS MAY FILE AN APPLICATION WITH THE COMMISSION SEEKING AUTHORI-
51 ZATION TO ESTABLISH INCENTIVES TO DEPLOY SMART GRID SYSTEMS CONSISTENT
52 WITH SUBDIVISION ONE OF THIS SECTION.

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

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

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

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

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

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

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

20 (A) THE INSTALLATION OR OPERATION OF A SMART GRID SYSTEM BY AN ELEC-
21 TRICAL CORPORATION OR ELECTRICAL COOPERATIVE, OR A CONTRACTOR OR AFFIL-
22 IATE, WITHIN THE SERVICE AREA OF THE ELECTRICAL CORPORATION OR ELEC-
23 TRICAL COOPERATIVE; OR

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

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