STATE OF NEW YORK

10493

IN ASSEMBLY

May 28, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Joyner) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the public service law, the transportation corporations law, the labor law and the public authorities law, in relation to thermal energy networks

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "utility thermal energy network and jobs act".

§ 2. Legislative findings and intent. The legislature finds and declares that:

1. New York State has a strong interest in ensuring that building emissions goals of the Climate Leadership and Community Protection Act (CLCPA) are met. Buildings are New York's largest source of greenhouse gasses and other climate emissions, due to the combustion of fossil fuels for heating, domestic hot water, cooking, and other end uses;

2. The decarbonization of buildings must be pursued in a manner that is affordable, accessible, preserves and creates living-wage jobs, and retains the knowledge and experience of the existing utility union workforce;

3. Thermal energy networks have the potential to decarbonize buildings at the community and utility scale and help achieve the goals of the CLCPA;

4. Thermal energy networks consist of pipe loops between multiple buildings and energy sources carrying water at ambient temperature; building owners can connect to the ambient temperature loops with water source heat pumps installed within the building, which can be used for heating and cooling and hot water services;

5. Many utilities in New York State have been seeking to develop thermal energy networks, but legal and regulatory barriers and the current and outdated public service law framework have prevented them from moving these proposals forward;

6. New York State has a strong interest in ensuring an adequate supply of reliable electrical power and, therefore, needs to promote the devel-

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

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opment of alternative power sources and take steps to assure reliable deliverability. Thermal energy networks are highly efficient because they utilize and exchange thermal energy from many underground sources and buildings, including recycled thermal energy, minimizing impact on the electricity grid;

7. Access to thermal energy networks has the potential to reduce the up front and operating costs of building electrification for customers;

8. Utilities' access to capital, their experience with networked infrastructure in public rights of way, and the requirement that they serve all customers, positions them well to develop and scale thermal energy networks that are accessible to all customers and to coordinate the development of thermal energy networks with any downsizing of the utility gas system;

9. New York State also has a proprietary interest in the efficient and reliable delivery of energy and the energy infrastructure of the state, which interest is acknowledged throughout the public service law. Utility corporations and other power suppliers share these interests and, moreover, have a duty to protect proprietary interests in the projects they fund and such investments of ratepayer resources can be protected by establishing effective contractor qualification and performance standards, including requirements for prevailing wage rates, bona fide apprenticeship criteria, and project labor agreements;

10. The construction industry is highly skilled and labor intensive, and the installation of modern thermal energy networks involves particularly complex work, and, therefore, effective qualification standards for craft labor personnel employed on these projects are critically needed to promote successful project delivery;

11. Finally, the legislature finds that these facts are especially vital now because the construction industry is experiencing widespread skill shortages across the country, which are crippling existing capital projects and threatening projects planned for the future. The construction of thermal energy networks will utilize many of the same skills that today's utility and building trades workforces already possess;

12. Thus, it is the intent of the legislature that passage of this act is for the following purposes:

a. To remove the legal barriers to utility development of thermal energy networks and require the public service commission to authorize and direct utilities to immediately commence piloting thermal energy networks in each and every utility territory;

b. To direct and authorize the public service commission to develop a regulatory structure for utility thermal energy networks that scales affordable and accessible building electrification, protects customers, and balances the role of incumbent monopoly utilities with other market and public actors;

c. To promote the successful planning and delivery of thermal energy networks and protect critical investments in such projects by requiring the use of appropriate quality craft labor policies that ensure the development of and access to an adequate supply of well trained, highly skilled craft persons needed to support timely, reliable, high-quality projects;

d. To promote strong economic development and good jobs for local residents in the expanding decarbonized sector by requiring application of progressive state labor and employment policies that ensure public utility investments and related state subsidies create unparalleled skill training and employment opportunities for residents in project

areas through the use of local prevailing wage standards and successful, bona fide apprenticeship programs, or project labor agreements which incorporate prevailing wage and training standards and provide additional benefits for project owners and workers; and

e. To promote the use of pre-apprenticeship programs that will fortify and expand existing apprenticeship programs through systematic outreach efforts to recruit and assist persons from underrepresented and low-income communities by providing such persons with remedial education, social services and unique opportunities for direct access into high quality apprenticeship programs and gainful employment in the growing building decarbonization workforce.

§ 3. Section 2 of the public service law is amended by adding two new subdivisions 28 and 29 to read as follows:

28. "Thermal energy," when used in this chapter, shall mean piped non-combustible fluids used for transferring heat into and out of buildings for the purpose of eliminating any resultant on-site greenhouse gas emissions of all types of heating and cooling processes, including, but not limited to, comfort heating and cooling, domestic hot water, and refrigeration.

29. "Thermal energy network," when used in this chapter, shall mean all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate a utility-scale distribution infrastructure project that supplies thermal energy.

§ 4. Subdivision 11 of section 2 of the public service law, as amended by chapter 159 of the laws of 1992, is amended to read as follows:

11. The term "gas corporation," when used in this chapter, includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any gas plant **or thermal energy network** (a) except where gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to others, (b) except where compressed natural gas is sold, distributed or furnished solely as a fuel for use in motor vehicles, (c) except where manufactured gas is sold by the producer only for use or resale by a gas corporation and such gas of the producer and any affiliated producers does not exceed in any one year thirty per cent of the total gas sold by any purchaser thereof in the area in which such manufactured gas is resold either as manufactured gas or as a component of mixed gas, and (d) except where gas is made or produced solely from one or more alternate energy production facilities or distributed solely from one or more of such facilities to users located at or near a project site; provided, however, that any producer not included within the meaning of "gas corporation" by reason of exception (c) or (d) shall nevertheless be considered a gas corporation for the purposes of commission jurisdiction relating to the safety of the construction, operation, or maintenance of plants manufacturing pipeline quality gas.

§ 5. Subdivision 13 of section 2 of the public service law, as amended by chapter 843 of the laws of 1981, is amended to read as follows:

13. The term "electric corporation," when used in this chapter, includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad corporation generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others) owning, operating or managing any electric plant **or thermal**

energy network except where electricity **or thermal energy** is generated or distributed by the producer solely on or through private property for railroad or street railroad purposes or for its own use or the use of its tenants and not for sale to others; or except where electricity is generated by the producer solely from one or more co-generation, small hydro or alternate energy production facilities or distributed solely from one or more of such facilities to users located at or near a project site.

§ 6. Subdivision 1 of section 5 of the public service law is amended by adding a new paragraph i to read as follows:

i. To thermal energy provided by gas corporations, electric corporations, or combination gas and electric corporations.

§ 7. Paragraphs (c) and (d) of subdivision 6 of section 65 of the public service law, paragraph (c) as amended by chapter 204 of the laws of 2010 and paragraph (d) as amended by chapter 388 of the laws of 2011, are amended and a new paragraph (e) is added to read as follows:

(c) for a remote meter reading device upon the request and consent of the customer; [~~or~~]

(d) for installation of capital improvements and fixtures to promote energy efficiency upon the request and consent of the customer, including but not limited to the performance of qualified energy efficiency services for customers participating in green jobs-green New York on-bill recovery pursuant to section sixty-six-m of this article[~~.~~]**; or**

(e) for the provision of thermal energy service.

§ 8. Section 10 of the transportation corporations law is amended to read as follows:

§ 10. Definitions. A gas corporation is a corporation organized to manufacture, to produce or otherwise acquire and to supply for public use artificial or natural gas [~~or~~]**,** a mixture of both **artificial and natural** gases **or thermal energy** for light, heat or power and for lighting the streets and public and private buildings of cities, villages and towns in this state. An electric corporation is a corporation organized to manufacture, to produce or otherwise acquire, and to supply for public use electricity **or thermal energy** for light, heat or power, and for lighting streets, avenues, public parks and places and public and private buildings of cities, villages and towns within this state. A gas and electric corporation is a corporation organized for purposes of both a gas corporation and an electric corporation. **For purposes of this article, "thermal energy" shall have the same meaning as defined by subdivision twenty-eight of section two of the public service law.**

§ 9. Subdivisions 1, 2, 3 and the opening paragraph of subdivision 3-b of section 11 of the transportation corporations law, subdivision 3 as amended by chapter 622 of the laws of 1947 and the opening paragraph of subdivision 3-b as amended by chapter 840 of the laws of 1977, are amended to read as follows:

1. A gas corporation and a gas and electric corporation shall have power to manufacture gas, and to acquire **thermal energy or** natural or artificial gas and to mix the gases and to sell and furnish **thermal energy for heating or cooling or** gas for light, heat or power; and to lay conductors**, pipes, conduits, ducts and other fixtures** for gas **or thermal energy networks** in the streets, highways and public places, in each city, village and town in the county or counties named in its certificate of incorporation, with the consent of the municipal authorities of such city, village or town, and under such reasonable regulations as they may prescribe.

2. Every corporation having authority under any general or special law or under any charter or franchise, to lay down, erect or maintain pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality for the purpose of furnishing or distributing natural gas **or thermal energy**, may acquire and supply for public use artificial gas **or thermal energy**.

Where any gas corporation is serving natural gas under permits or franchises permitting the laying or maintaining of mains or pipes and conveying natural gas, and the supply of natural gas has become inadequate or insufficient to give reasonable service to consumers in the municipalities served by it, such gas corporation may supply artificial gas or a mixture of natural and artificial gases **or thermal energy** under such permits or franchises.

3. An electric corporation and a gas and electric corporation shall have power to generate, acquire and supply electricity **or thermal energy** for heat**, cooling** or power in cities, towns and villages within this state, and to light the streets, highways and public places thereof, and the public and private buildings therein; and to make, sell or lease all machines, instruments, apparatus and other equipments therefor, and for transmitting and distributing electricity **or thermal energy**, to lay, erect and construct suitable wires or other conductors, with the necessary poles, pipes**, thermal energy networks** or other fixtures in, on, over and under the streets, avenues, public parks and places in such cities, towns or villages, with the consent of the municipal authorities thereof, and in such manner and under such reasonable regulations, as they may prescribe.

The construction, use and maintenance by an electric corporation of transmission, distribution and service lines and wires **or thermal energy networks** in, over or under any street, highway or public place and the construction, use and maintenance by a gas corporation of transmission, distribution and service pipes, conduits, ducts or other fixtures in, over or under any trees, highway or public place, as may be necessary for its corporate purposes, are hereby declared to be public uses and purposes.

§ 10. Subdivision 1 of section 224-d of the labor law, as added by section 2 of part AA of chapter 56 of the laws of 2021, is amended and a new subdivision 8 is added to read as follows:

1. For purposes of this section, a "covered renewable energy system" means **(a)** a renewable energy system, as such term is defined in section sixty-six-p of the public service law, with a capacity of greater than five megawatts alternating current and which involves the procurement of renewable energy credits by a public entity, or a third party acting on behalf and for the benefit of a public entity**; or (b) any "thermal energy network" as defined by subdivision twenty-nine of section two of the public service law**.

8. Any thermal energy network covered by this section shall require all contractors and subcontractors performing construction work to use apprenticeship agreements, as defined by article twenty-three of this chapter, with pre-apprenticeship direct entry providers registered with the department.

§ 11. The public service law is amended by adding a new section 66-t to read as follows:

§ 66-t. Thermal energy network development. 1. The public service commission shall initiate a proceeding within three months of the effective date of this section to support the development of thermal energy networks for the purpose of meeting the greenhouse gas emissions and

equity goals of the climate leadership and community protection act. The matters the commission shall consider in such proceeding shall include, but shall not be limited to, the appropriate ownership, market, and rate structures for thermal energy networks and whether the provision of thermal energy services by gas and/or electric utilities is in the public interest. The commission shall promulgate rules and regulations within two years to: (a) create fair market access rules for utility-owned thermal energy networks to accept thermal energy that aligns with the climate justice and greenhouse gas emissions reductions requirements of the climate leadership and community protection act and that does not increase greenhouse gas emissions or co-pollutants; (b) exempt small-scale thermal energy networks not owned by utilities from commission regulation; (c) promote the training and transition of utility workers impacted by this act; and (d) encourage third party participation and competition where it will maximize benefits to customers.

2. Within three months of the effective date of this section, each of the seven largest gas, electric, or combination gas and electric corporations shall submit to the commission for review and approval at least one and as many as five proposed pilot thermal energy network projects. In developing the pilot project proposals, at least one pilot project in each utility territory shall be proposed in a disadvantaged community as defined in subdivision five of section 75-0101 of the environmental conservation law, and if a utility proposes four or more pilot projects, at least two shall be proposed in disadvantaged communities. Each utility shall coordinate with other utility participants, the New York state energy research and development authority, and consultants with expertise on successful pilot projects to ensure that the pilot projects are diverse and designed to inform the commission's decisions in the proceeding on the various ownership, market, and rate structures for thermal energy networks. The pilot project proposals shall include specific customer protection plans and shall be made publicly available on the commission's website and shall be subject to a public comment period of no less than thirty days. Within six months of the effective date of this section, the commission shall determine whether it is in the public interest to approve or modify such pilot thermal energy network projects and shall issue an order directing each gas, electric or combination gas and electric corporation to implement such proposed or modified pilot thermal energy network projects. In considering whether pilot thermal energy network projects are in the public interest, the commission shall consider whether the pilot project will develop information useful for the commission's promulgation of regulations governing thermal energy networks, whether the pilot project furthers the climate justice and/or emissions reduction mandates of the climate leadership and community protection act, whether the pilot project advances financial and technical approaches to equitable and affordable building electrification, and whether the pilot project creates benefits to customers and society at large, including but not limited to public health benefits in areas with disproportionate environmental or public health burdens, job retention/creation, reliability, and increased affordability of renewable thermal energy options.

3. Each gas, electric, or combination gas and utility corporation shall report to the commission, on a quarterly basis, and until completion of the pilot thermal energy network project as determined by the commission, the status of each pilot thermal energy network project. The commission shall post and make publicly available such reports on its website. The report shall include, but not be limited to, the: (a)

stage of development of each pilot project; (b) barriers to development; (c) number of customers served; (d) costs of the pilot project; (e) number of jobs retained or created by the pilot project; and (f) any other such information the commission deems to be in the public interest.

4. Any thermal energy network created under this section shall demonstrate that the gas or electric corporation has entered into a labor peace agreement with a bona fide labor organization of jurisdiction that is actively engaged in representing gas and electric corporation employees. The labor peace agreement shall apply to the employees necessary for the maintenance and operation of such thermal energy network. The labor peace agreement shall be an ongoing material condition of authorization to maintain and operate such thermal energy networks. The employees eligible for these positions shall first be selected from and offered to a pool of transitioning utility workers who have lost, or are at risk of losing, their employment with a utility downsizing its gas transmission and distribution system. Such list of potential employees shall be provided by affected unions and provided to the department of labor. The department of labor shall update and provide such list to the gas or electric corporation ninety days prior to purchase, acquisition, and/or construction of any thermal energy network created under this section.

§ 12. The public authorities law is amended by adding a new section 1020-ll to read as follows:

§ 1020-ll. Pilot thermal energy network projects. Within three months of the effective date of this section, the authority and its service provider shall submit for review to the department of public service at least one and as many as five proposed pilot thermal energy network projects as defined in subdivision twenty-nine of section two of the public service law. Within six months of the effective date of this section, and upon recommendation by the department of public service, the authority shall determine whether it is in the public interest to approve or modify such pilot thermal energy network projects and shall direct the service provider to implement such proposed or modified pilot thermal energy network projects. The authority shall promulgate rules and regulations consistent with the standards set forth in subdivisions two and three of section sixty-six-t of the public service law.

§ 13. This act shall take effect immediately.