

# STATE OF NEW YORK

3904--A

2021-2022 Regular Sessions

## IN ASSEMBLY

January 28, 2021

Introduced by M. of A. CUSICK, ENGLEBRIGHT, ZEBROWSKI, FAHY, MAGNARELLI, THIELE, McDONALD, ABINANTI, ABBATE, HEVESI, JACKSON, SIMON, BARRON, GOTTFRIED -- read once and referred to the Committee on Energy -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the energy law, the executive law and the public service law, in relation to critical energy infrastructure security and responsibility

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

1 Section 1. Subdivision 1 of section 3-101 of the energy law, as  
2 amended by chapter 253 of the laws of 2013, is amended to read as  
3 follows:

4 1. to obtain and maintain an adequate and continuous supply of safe,  
5 dependable and economical energy for the people of the state, including  
6 through the protection of critical energy infrastructure as defined in  
7 subdivision fourteen of section 1-103 of this chapter, and to accelerate  
8 development and use within the state of renewable energy sources, all in  
9 order to promote the state's economic growth, to create employment with-  
10 in the state, to protect its environmental values and agricultural  
11 heritage, to husband its resources for future generations, and to  
12 promote the health and welfare of its people;

13 § 2. Section 1-103 of the energy law is amended by adding two new  
14 subdivisions 14 and 15 to read as follows:

15 14. "Critical energy infrastructure" means systems, including indus-  
16 trial control systems, customer electrical or gas consumption data,  
17 assets, places or things, whether physical or virtual, so vital to the  
18 state that the disruption, incapacitation or destruction of such  
19 systems, including industrial control systems, customer electrical or  
20 gas consumption data, assets, places or things could jeopardize the

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

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1 health, safety, welfare, energy distribution, transmission, reliability,  
2 or security of the state, its residents or its economy.

3 15. "Industrial control systems" means a combination of control compo-  
4 ponents that support operational functions in gas, distribution, trans-  
5 mission, and advanced metering infrastructure control centers, and act  
6 together to achieve an industrial objective, including controls that are  
7 fully automated or that include a human-machine interface.

8 § 3. Paragraph (j) of subdivision 2 of section 709 of the executive  
9 law, as amended by section 14 of part B of chapter 56 of the laws of  
10 2010, is amended to read as follows:

11 (j) work with local, state and federal agencies and private entities  
12 to conduct assessments of the vulnerability of critical infrastructure  
13 to terrorist attack, cyber attack, and other natural and man-made disas-  
14 ters, including, but not limited to, nuclear facilities, power plants,  
15 telecommunications systems, mass transportation systems, public road-  
16 ways, railways, bridges and tunnels, and attendant industrial control  
17 systems as defined by subdivision fifteen of section 1-103 of the energy  
18 law and develop strategies that may be used to protect such infrastruc-  
19 ture from terrorist attack, cyber attack, and other natural and man-made  
20 disasters;

21 § 4. Paragraph (a) of subdivision 19 of section 66 of the public  
22 service law, as amended by section 4 of part X of chapter 57 of the laws  
23 of 2013, is amended to read as follows:

24 (a) The commission shall have power to provide for management and  
25 operations audits of gas corporations and electric corporations. Such  
26 audits shall be performed at least once every five years for combination  
27 gas and electric corporations, as well as for straight gas corporations  
28 having annual gross revenues in excess of two hundred million dollars.  
29 The audit shall include, but not be limited to, an investigation of the  
30 company's construction program planning in relation to the needs of its  
31 customers for reliable service, an evaluation of the efficiency of the  
32 company's operations and protection of critical energy infrastructure as  
33 defined in subdivision fourteen of section 1-103 of the energy law,  
34 recommendations with respect to same, and the timing with respect to the  
35 implementation of such recommendations. The commission shall have  
36 discretion to have such audits performed by its staff, or by independent  
37 auditors.

38 In every case in which the commission chooses to have the audit  
39 provided for in this subdivision or pursuant to subdivision fourteen of  
40 section sixty-five of this article performed by independent auditors, it  
41 shall have authority to select the auditors, and to require the company  
42 being audited to enter into a contract with the auditors providing for  
43 their payment by the company. Such contract shall provide further that  
44 the auditors shall work for and under the direction of the commission  
45 according to such terms as the commission may determine are necessary  
46 and reasonable.

47 § 5. Subdivision 19 of section 66 of the public service law is amended  
48 by adding a new paragraph (d) to read as follows:

49 (d) The commission shall have the power to provide for an annual audit  
50 of gas corporations and electric corporations relating to the adequacy  
51 of cyber-security policies, protocols, procedures and protections  
52 including, but not limited to, as such policies, protocols, procedures  
53 and protections relate to critical energy infrastructure as defined in  
54 subdivision fourteen of section 1-103 of the energy law and also to  
55 customer privacy. The commission shall have the discretion to have such  
56 audits performed by its staff or by an independent third-party.

1 § 6. Paragraph (a) of subdivision 21 of section 66 of the public  
2 service law, as added by section 4 of part X of chapter 57 of the laws  
3 of 2013, is amended to read as follows:

4 (a) Each electric corporation subject to section twenty-five-a of this  
5 chapter shall annually, on or before December fifteenth, submit to the  
6 commission an emergency response plan for review and approval. The emer-  
7 gency response plan shall be designed for the reasonably prompt restora-  
8 tion of service in the case of an emergency event, defined for purposes  
9 of this subdivision as an event where widespread outages have occurred  
10 in the service territory of the company due to storms, cyber attack, or  
11 other causes beyond the control of the company. The emergency response  
12 plan shall include, but need not be limited to, the following: (i) the  
13 identification of management staff responsible for company operations  
14 during an emergency; (ii) a communications system with customers during  
15 an emergency that extends beyond normal business hours and business  
16 conditions; (iii) identification of and outreach plans to customers who  
17 had documented their need for essential electricity for medical needs;  
18 (iv) identification of and outreach plans to customers who had docu-  
19 mented their need for essential electricity to provide critical telecom-  
20 munications, critical transportation, critical fuel distribution  
21 services or other large-load customers identified by the commission; (v)  
22 designation of company staff to communicate with local officials and  
23 appropriate regulatory agencies; (vi) provisions regarding how the  
24 company will assure the safety of its employees and contractors; (vii)  
25 procedures for deploying company and mutual aid crews to work assignment  
26 areas; (viii) identification of additional supplies and equipment needed  
27 during an emergency; (ix) the means of obtaining additional supplies and  
28 equipment; (x) procedures to practice the emergency response plan; (xi)  
29 appropriate safety precautions regarding electrical hazards, including  
30 plans to promptly secure downed wires within thirty-six hours of notifi-  
31 cation of the location of such downed wires from a municipal emergency  
32 official; and (xii) such other additional information as the commission  
33 may require. Each such corporation shall, on an annual basis, undertake  
34 drills implementing procedures to practice its emergency management  
35 plan. The commission may adopt additional requirements consistent with  
36 ensuring the reasonably prompt restoration of service in the case of an  
37 emergency event.

38 § 7. Section 66 of the public service law is amended by adding two new  
39 subdivisions 29 and 30 to read as follows:

40 29. Promulgate rules and regulations to direct electric or gas corpo-  
41 rations to develop and implement tools to monitor operational control  
42 networks giving the electric or gas corporation the ability to undertake  
43 the detection of unauthorized network behavior related to such corpo-  
44 ration's industrial control systems, as defined in subdivision fifteen  
45 of section 1-103 of the energy law. On or before December thirty-first,  
46 two thousand twenty-three and not later than five years after such date,  
47 and every five years thereafter, the commission shall provide a report  
48 to the governor, the temporary president of the senate, the speaker of  
49 the assembly, the chairperson of the assembly standing committee on  
50 energy, and the chairperson of the senate standing committee on energy  
51 and telecommunications reviewing electric or gas corporation compliance  
52 with this section, including, as necessary, recommendations to the  
53 legislature if the commission determines that additional measures are  
54 required to ensure the effective protection of electric or gas corpo-  
55 ration critical infrastructure.

1 30. Promulgate rules and regulations to direct electric or gas corpo-  
2 rations to require the installation of advanced metering infrastructure  
3 that connects to the electric or gas distribution network operated by  
4 such electric or gas corporation be permitted only so long as access to  
5 the advanced meter infrastructure enables two-way communication between  
6 utilities and meters through the optimal communications network option,  
7 such as a wireless network, that is shared by at least two meter provid-  
8 ers operating within the United States of America, if the commission  
9 determines that it is cost effective to do so.

10 § 8. This act shall take effect on the one hundred eightieth day after  
11 it shall have become a law. Effective immediately, the public service  
12 commission is authorized and directed to take actions necessary to  
13 promulgate rules and regulations related to the implementation of subdi-  
14 visions 29 and 30 of section 66 of the public service law on or before  
15 such effective date.