STATE OF NEW YORK

3904--B

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, GOTTFRIED, ZINERMAN, OTIS, PALMESANO -- 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 -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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:

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

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

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

14. "Critical energy infrastructure" means systems, including industrial control systems, customer electrical or gas consumption data, assets, places or things, whether physical or virtual, so vital to the

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

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state that the disruption, incapacitation or destruction of such systems, including industrial control systems, customer electrical or gas consumption data, assets, places or things could jeopardize the health, safety, welfare, energy distribution, transmission, reliability, or security of the state, its residents or its economy.

15. "Industrial control systems" means a combination of control components that support operational functions in gas, distribution, transmission, and advanced metering infrastructure control centers, and act together to achieve an industrial objective, including controls that are fully automated or that include a human-machine interface.

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

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

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

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

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

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

(d) The commission shall have the power to provide for an annual audit of gas corporations and electric corporations relating to the adequacy of cyber-security policies, protocols, procedures and protections including, but not limited to, as such policies, protocols, procedures and protections relate to critical energy infrastructure as defined in

subdivision fourteen of section 1-103 of the energy law and also to customer privacy. The commission shall have the discretion to have such audits performed by its staff or by an independent third party.

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

(a) Each electric corporation subject to section twenty-five-a of this chapter shall annually, on or before December fifteenth, submit to the commission an emergency response plan for review and approval. The emergency response plan shall be designed for the reasonably prompt restoration of service in the case of an emergency event, defined for purposes of this subdivision as an event where widespread outages have occurred in the service territory of the company due to storms, cyber attack, or other causes beyond the control of the company. The emergency response plan shall include, but need not be limited to, the following: (i) the identification of management staff responsible for company operations during an emergency; (ii) a communications system with customers during an emergency that extends beyond normal business hours and business conditions; (iii) identification of and outreach plans to customers who had documented their need for essential electricity for medical needs; (iv) identification of and outreach plans to customers who had documented their need for essential electricity to provide critical telecommunications, critical transportation, critical fuel distribution services or other large-load customers identified by the commission; (v) designation of company staff to communicate with local officials and appropriate regulatory agencies; (vi) provisions regarding how the company will assure the safety of its employees and contractors; (vii) procedures for deploying company and mutual aid crews to work assignment areas; (viii) identification of additional supplies and equipment needed during an emergency; (ix) the means of obtaining additional supplies and equipment; (x) procedures to practice the emergency response plan; (xi) appropriate safety precautions regarding electrical hazards, including plans to promptly secure downed wires within thirty-six hours of notification of the location of such downed wires from a municipal emergency official; and (xii) such other additional information as the commission may require. Each such corporation shall, on an annual basis, undertake drills implementing procedures to practice its emergency management plan. The commission may adopt additional requirements consistent with ensuring the reasonably prompt restoration of service in the case of an emergency event.

§ 7. Section 66 of the public service law is amended by adding two new subdivisions 30 and 31 to read as follows:

30. Promulgate rules and regulations to direct electric or gas corporations to develop and implement tools to monitor operational control networks giving the electric or gas corporation the ability to undertake the detection of unauthorized network behavior related to such corporation's industrial control systems, as defined in subdivision fifteen of section 1-103 of the energy law. On or before December thirty-first, two thousand twenty-three and not later than five years after such date, and every five years thereafter, the commission shall provide a report to the governor, the temporary president of the senate, the speaker of the assembly, the chairperson of the assembly standing committee on energy, and the chairperson of the senate standing committee on energy and telecommunications reviewing electric or gas corporation compliance with this section, including, as necessary, recommendations to the legislature if the commission determines that additional measures are

required to ensure the effective protection of electric or gas corporation critical infrastructure.

31. Promulgate rules and regulations to direct electric or gas corporations to require the installation of advanced metering infrastructure that connects to the electric or gas distribution network operated by such electric or gas corporation be permitted only so long as access to the advanced meter infrastructure enables two-way communication between utilities and meters through the optimal communications network option, such as a wireless network, that is shared by at least two meter providers operating within the United States of America, if the commission determines that it is cost effective to do so.

§ 8. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the public service commission is authorized and directed to take actions necessary to promulgate rules and regulations related to the implementation of subdivisions 30 and 31 of section 66 of the public service law on or before such effective date.