

STATE OF NEW YORK

9422

IN SENATE

May 25, 2022

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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:

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "utility thermal energy network and jobs act".
3 § 2. Legislative findings and intent. The legislature finds and
4 declares that:
5 1. New York State has a strong interest in ensuring that building
6 emissions goals of the Climate Leadership and Community Protection Act
7 (CLCPA) are met. Buildings are New York's largest source of greenhouse
8 gasses and other climate emissions, due to the combustion of fossil
9 fuels for heating, domestic hot water, cooking, and other end uses;
10 2. The decarbonization of buildings must be pursued in a manner that
11 is affordable, accessible, preserves and creates living-wage jobs, and
12 retains the knowledge and experience of the existing utility union work-
13 force;
14 3. Thermal energy networks have the potential to decarbonize buildings
15 at the community and utility scale and help achieve the goals of the
16 CLCPA;
17 4. Thermal energy networks consist of pipe loops between multiple
18 buildings and energy sources carrying water at ambient temperature;
19 building owners can connect to the ambient temperature loops with water
20 source heat pumps installed within the building, which can be used for
21 heating and cooling and hot water services;
22 5. Many utilities in New York State have been seeking to develop ther-
23 mal energy networks, but legal and regulatory barriers and the current
24 and outdated public service law framework have prevented them from
25 moving these proposals forward;

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

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1 6. New York State has a strong interest in ensuring an adequate supply
2 of reliable electrical power and, therefore, needs to promote the devel-
3 opment of alternative power sources and take steps to assure reliable
4 deliverability. Thermal energy networks are highly efficient because
5 they utilize and exchange thermal energy from many underground sources
6 and buildings, including recycled thermal energy, minimizing impact on
7 the electricity grid;

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

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

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

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

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

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

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

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

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

54 d. To promote strong economic development and good jobs for local
55 residents in the expanding decarbonized sector by requiring application
56 of progressive state labor and employment policies that ensure public

1 utility investments and related state subsidies create unparalleled
2 skill training and employment opportunities for residents in project
3 areas through the use of local prevailing wage standards and successful,
4 bona fide apprenticeship programs, or project labor agreements which
5 incorporate prevailing wage and training standards and provide addi-
6 tional benefits for project owners and workers; and

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

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

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

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

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

28 11. The term "gas corporation," when used in this chapter, includes
29 every corporation, company, association, joint-stock association, part-
30 nership and person, their lessees, trustees or receivers appointed by
31 any court whatsoever, owning, operating or managing any gas plant or
32 thermal energy network (a) except where gas is made or produced and
33 distributed by the maker on or through private property solely for its
34 own use or the use of its tenants and not for sale to others, (b) except
35 where compressed natural gas is sold, distributed or furnished solely as
36 a fuel for use in motor vehicles, (c) except where manufactured gas is
37 sold by the producer only for use or resale by a gas corporation and
38 such gas of the producer and any affiliated producers does not exceed in
39 any one year thirty per cent of the total gas sold by any purchaser
40 thereof in the area in which such manufactured gas is resold either as
41 manufactured gas or as a component of mixed gas, and (d) except where
42 gas is made or produced solely from one or more alternate energy
43 production facilities or distributed solely from one or more of such
44 facilities to users located at or near a project site; provided, howev-
45 er, that any producer not included within the meaning of "gas corpo-
46 ration" by reason of exception (c) or (d) shall nevertheless be consid-
47 ered a gas corporation for the purposes of commission jurisdiction
48 relating to the safety of the construction, operation, or maintenance of
49 plants manufacturing pipeline quality gas.

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

52 13. The term "electric corporation," when used in this chapter,
53 includes every corporation, company, association, joint-stock associ-
54 ation, partnership and person, their lessees, trustees or receivers
55 appointed by any court whatsoever (other than a railroad or street rail-
56 road corporation generating electricity solely for railroad or street

1 railroad purposes or for the use of its tenants and not for sale to
2 others) owning, operating or managing any electric plant or thermal
3 energy network except where electricity or thermal energy is generated
4 or distributed by the producer solely on or through private property for
5 railroad or street railroad purposes or for its own use or the use of
6 its tenants and not for sale to others; or except where electricity is
7 generated by the producer solely from one or more co-generation, small
8 hydro or alternate energy production facilities or distributed solely
9 from one or more of such facilities to users located at or near a
10 project site.

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

13 i. To thermal energy provided by gas corporations, electric corpo-
14 rations, or combination gas and electric corporations.

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

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

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

26 (e) for the provision of thermal energy service.

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

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

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

48 1. A gas corporation and a gas and electric corporation shall have
49 power to manufacture gas, and to acquire thermal energy or natural or
50 artificial gas and to mix the gases and to sell and furnish thermal
51 energy for heating or cooling or gas for light, heat or power; and to
52 lay conductors, pipes, conduits, ducts and other fixtures for gas or
53 thermal energy networks in the streets, highways and public places, in
54 each city, village and town in the county or counties named in its
55 certificate of incorporation, with the consent of the municipal authori-

1 ties of such city, village or town, and under such reasonable regu-
2 lations as they may prescribe.

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

9 Where any gas corporation is serving natural gas under permits or
10 franchises permitting the laying or maintaining of mains or pipes and
11 conveying natural gas, and the supply of natural gas has become inade-
12 quate or insufficient to give reasonable service to consumers in the
13 municipalities served by it, such gas corporation may supply artificial
14 gas or a mixture of natural and artificial gases or thermal energy under
15 such permits or franchises.

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

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

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

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

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

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

55 § 66-t. Thermal energy network development. 1. The public service
56 commission shall initiate a proceeding within three months of the effec-

1 tive date of this section to support the development of thermal energy
2 networks for the purpose of meeting the greenhouse gas emissions and
3 equity goals of the climate leadership and community protection act.
4 The matters the commission shall consider in such proceeding shall
5 include, but shall not be limited to, the appropriate ownership, market,
6 and rate structures for thermal energy networks and whether the
7 provision of thermal energy services by gas and/or electric utilities is
8 in the public interest. The commission shall promulgate rules and regu-
9 lations within two years to: (a) create fair market access rules for
10 utility-owned thermal energy networks to accept thermal energy that
11 aligns with the climate justice and greenhouse gas emissions reductions
12 requirements of the climate leadership and community protection act and
13 that does not increase greenhouse gas emissions or co-pollutants; (b)
14 exempt small-scale thermal energy networks not owned by utilities from
15 commission regulation; (c) promote the training and transition of utili-
16 ty workers impacted by this act; and (d) encourage third party partic-
17 ipation and competition where it will maximize benefits to customers.

18 2. Within three months of the effective date of this section, each of
19 the seven largest gas, electric, or combination gas and electric corpo-
20 rations shall submit to the commission for review and approval at least
21 one and as many as five proposed pilot thermal energy network projects.
22 In developing the pilot project proposals, at least one pilot project in
23 each utility territory shall be proposed in a disadvantaged community as
24 defined in subdivision five of section 75-0101 of the environmental
25 conservation law, and if a utility proposes four or more pilot projects,
26 at least two shall be proposed in disadvantaged communities. Each utili-
27 ty shall coordinate with other utility participants, the New York state
28 energy research and development authority, and consultants with exper-
29 tise on successful pilot projects to ensure that the pilot projects are
30 diverse and designed to inform the commission's decisions in the
31 proceeding on the various ownership, market, and rate structures for
32 thermal energy networks. The pilot project proposals shall include
33 specific customer protection plans and shall be made publicly available
34 on the commission's website and shall be subject to a public comment
35 period of no less than thirty days. Within six months of the effective
36 date of this section, the commission shall determine whether it is in
37 the public interest to approve or modify such pilot thermal energy
38 network projects and shall issue an order directing each gas, electric
39 or combination gas and electric corporation to implement such proposed
40 or modified pilot thermal energy network projects. In considering wheth-
41 er pilot thermal energy network projects are in the public interest, the
42 commission shall consider whether the pilot project will develop infor-
43 mation useful for the commission's promulgation of regulations governing
44 thermal energy networks, whether the pilot project furthers the climate
45 justice and/or emissions reduction mandates of the climate leadership
46 and community protection act, whether the pilot project advances finan-
47 cial and technical approaches to equitable and affordable building elec-
48 trification, and whether the pilot project creates benefits to customers
49 and society at large, including but not limited to public health bene-
50 fits in areas with disproportionate environmental or public health
51 burdens, job retention/creation, reliability, and increased affordabili-
52 ty of renewable thermal energy options.

53 3. Each gas, electric, or combination gas and utility corporation
54 shall report to the commission, on a quarterly basis, and until
55 completion of the pilot thermal energy network project as determined by
56 the commission, the status of each pilot thermal energy network project.

1 The commission shall post and make publicly available such reports on
2 its website. The report shall include, but not be limited to, the: (a)
3 stage of development of each pilot project; (b) barriers to development;
4 (c) number of customers served; (d) costs of the pilot project; (e)
5 number of jobs retained or created by the pilot project; and (f) any
6 other such information the commission deems to be in the public inter-
7 est.

8 4. Any thermal energy network created under this section shall demon-
9 strate that the gas or electric corporation has entered into a labor
10 peace agreement with a bona fide labor organization of jurisdiction that
11 is actively engaged in representing gas and electric corporation employ-
12 ees. The labor peace agreement shall apply to the employees necessary
13 for the maintenance and operation of such thermal energy network. The
14 labor peace agreement shall be an ongoing material condition of authori-
15 zation to maintain and operate such thermal energy networks. The employ-
16 ees eligible for these positions shall first be selected from and
17 offered to a pool of transitioning utility workers who have lost, or are
18 at risk of losing, their employment with a utility downsizing its gas
19 transmission and distribution system. Such list of potential employees
20 shall be provided by affected unions and provided to the department of
21 labor. The department of labor shall update and provide such list to
22 the gas or electric corporation ninety days prior to purchase, acquisi-
23 tion, and/or construction of any thermal energy network created under
24 this section.

25 § 12. The public authorities law is amended by adding a new section
26 1020-11 to read as follows:

27 § 1020-11. Pilot thermal energy network projects. Within three months
28 of the effective date of this section, the authority and its service
29 provider shall submit for review to the department of public service at
30 least one and as many as five proposed pilot thermal energy network
31 projects as defined in subdivision twenty-nine of section two of the
32 public service law. Within six months of the effective date of this
33 section, and upon recommendation by the department of public service,
34 the authority shall determine whether it is in the public interest to
35 approve or modify such pilot thermal energy network projects and shall
36 direct the service provider to implement such proposed or modified pilot
37 thermal energy network projects. The authority shall promulgate rules
38 and regulations consistent with the standards set forth in subdivisions
39 two and three of section sixty-six-t of the public service law.

40 § 13. This act shall take effect immediately.