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I N S E N A T E

(PREFILED)

January 8, 2014

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and ordered printed, and when printed to be committed to the Committee
on Energy and Telecommunications

AN ACT to amend the public service law, in relation to the regional
greenhouse gas initiative

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The public service law is amended by adding a new section
2 77-a to read as follows:
3 S 77-A. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES
4 THAT IT IS IN THE BEST PUBLIC POLICY INTERESTS OF THE STATE, ITS BUSI-
5 NESSES AND ITS CITIZENS TO ENSURE THAT, TO THE GREATEST EXTENT POSSIBLE,
6 THE LETTER AND SPIRIT OF ITS ENVIRONMENTAL REGULATIONS AIMED AT REDUCING
7 CARBON DIOXIDE EMISSIONS AND IMPROVING AIR QUALITY UNDER THE REGIONAL
8 GREENHOUSE GAS INITIATIVE (RGGI), ESTABLISHED BY REGULATION OF THE
9 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ARE ENFORCED FOR ANY GENERATOR
10 WHO DOES BUSINESS IN THE NEW YORK STATE ENERGY MARKET.
11 THIS POLICY CHANGE IS NECESSARY BECAUSE STATES THAT SURROUND NEW YORK
12 THAT DO NOT PARTICIPATE IN RGGI, BUT WHO DO EXPORT POWER TO NEW YORK
13 STATE, HAVE A DISTINCT COMPETITIVE ADVANTAGE OVER IN-STATE POWER GENER-
14 TORS. WHILE THE GOALS OF THE RGGI PROGRAM ARE LAUDABLE, IN-STATE FOSSIL
15 FUEL GENERATORS ARE EXPERIENCING SIGNIFICANT INCREASES IN THEIR COSTS AS
16 A RESULT OF THE NEED TO BUY CARBON DIOXIDE EMISSION ALLOWANCES IN THE
17 RGGI AUCTION, ESTABLISHED BY REGULATION OF THE NEW YORK STATE ENERGY AND
18 RESEARCH DEVELOPMENT AUTHORITY. HOWEVER, OUT-OF-STATE FOSSIL FUEL GENER-
19 ATORS IN NON-RGGI STATES MAY USE THE SAME EXACT FUEL AND PRODUCE THE
20 GREATER EMISSIONS ASSOCIATED WITH THAT FUEL, BUT ARE STILL ABLE TO
21 EXPORT POWER TO NEW YORK AT A CHEAPER PRICE BECAUSE THEY ARE NOT SUBJECT
22 TO THE COSTS ASSOCIATED WITH RGGI. THIS STATE OF AFFAIRS HURTS IN-STATE
23 POWER GENERATORS, THREATENS JOBS AND ENCOURAGES THE IMPORTATION OF
24 POLLUTION INTENSIVE POWER FROM OTHER STATES.
25 THE LEGISLATURE FURTHER DECLARES THAT IT IS IN THE BEST ECONOMIC AND
26 ENVIRONMENTAL INTERESTS OF THE STATE TO ADOPT POLICIES THAT SUPPORT JOB

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

LBD11841-02-3

1 RETENTION AND CREATION IN THE POWER GENERATION SECTOR IN THE STATE OF
2 NEW YORK, AND TO SEEK TO LIMIT POLLUTION AND ENVIRONMENTAL DEGRADATION
3 WHETHER IT EMANATES FROM WITHIN THE STATE OR FROM ANOTHER STATE. THE
4 COMMISSION WORKING WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOP-
5 MENT AUTHORITY AND THE FEDERALLY DESIGNATED BULK SYSTEM OPERATOR, ARE
6 THE STATE ENTITIES WITH THE EXPERTISE AND AUTHORITY TO RECTIFY THIS
7 PROBLEM THROUGH APPROPRIATE REGULATORY ACTIVITY.

8 THEREFORE, THIS LEGISLATION DIRECTS THE COMMISSION TO INITIATE A
9 STAKEHOLDER PROCESS, CONSISTENT WITH SECTION SEVENTY-SEVEN-B OF THIS
10 ARTICLE, WITH THE GOAL OF THE COMMISSION ISSUING AN ORDER AIMED AT ELIM-
11 INATING ANY UNFAIR FINANCIAL OR ENVIRONMENTAL ADVANTAGE THAT AN OUT-OF-
12 STATE POWER GENERATOR MAY ENJOY BECAUSE THE STATE IN WHICH IT IS LOCATED
13 DOES NOT PARTICIPATE IN THE RGGI PROGRAM.

14 S 2. The public service law is amended by adding a new section 77-b to
15 read as follows:

16 S 77-B. REGIONAL GREENHOUSE GAS INITIATIVE; EFFECT ON ELECTRICITY
17 MARKETS. 1. THE COMMISSION IS HEREBY AUTHORIZED AND DIRECTED TO DEVELOP
18 A MECHANISM FOR THE PURPOSE OF ELIMINATING, OR MINIMIZING TO THE GREAT-
19 EST EXTENT PRACTICABLE, THE COMPETITIVE ADVANTAGES IN THE STATE'S ELEC-
20 TRICITY MARKETS THAT OUT-OF-STATE POWER GENERATORS HAVE OVER IN-STATE
21 POWER GENERATORS DUE TO NEW YORK STATE'S PARTICIPATION IN THE REGIONAL
22 GREENHOUSE GAS INITIATIVE, ESTABLISHED BY REGULATION OF THE NEW YORK
23 STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SUCH MECHANISM SHALL BE
24 DEVELOPED PURSUANT TO A STAKEHOLDER PROCESS THROUGH A PROCEEDING TO BE
25 ESTABLISHED BY THE COMMISSION WITHIN ONE MONTH OF THE ENACTMENT OF THIS
26 SECTION. THE COMMISSION MAY, IN ITS DISCRETION, CONSULT WITH THE NEW
27 YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AND THE FEDERALLY
28 DESIGNATED BULK SYSTEM OPERATOR SERVING NEW YORK STATE'S ELECTRIC SYSTEM
29 IN DEVELOPING SUCH MECHANISM. WITHIN SIX MONTHS OF THE COMMISSION
30 HAVING ESTABLISHED A PROCEEDING PURSUANT TO THIS SECTION, THE DEPARTMENT
31 SHALL ISSUE A REPORT, BASED UPON THE STAKEHOLDER PROCESS IN SUCH
32 PROCEEDING, THAT DESCRIBES THE MECHANISM, ITS FUNCTION, ITS POSITIVE
33 ATTRIBUTES, AND ANY OF ITS ANTICIPATED NEGATIVE CONSEQUENCES, AS WELL AS
34 HOW THOSE CONSEQUENCES COULD BE MINIMIZED OR MITIGATED. SUCH REPORT
35 SHALL BE PROVIDED FOR PUBLIC STAKEHOLDER REVIEW AND COMMENT DURING A
36 THREE MONTH PERIOD. WITHIN ONE MONTH OF COMPLETING THE PUBLIC STAKE-
37 HOLDER REVIEW AND COMMENT PERIOD ON SUCH REPORT, THE COMMISSION SHALL
38 REVISE SUCH MECHANISM, AS NEEDED AND TAKING INTO ACCOUNT SUCH PUBLIC
39 STAKEHOLDER COMMENTS, AS THE COMMISSION DEEMS TO BE IN THE PUBLIC INTER-
40 EST AND CONSISTENT WITH THE LEGISLATIVE INTENT EXPRESSED PURSUANT TO
41 SECTION SEVENTY-SEVEN-A OF THIS ARTICLE. WITHIN THREE MONTHS OF SUCH
42 MECHANISM HAVING BEEN REVISED, AS NEEDED, AND MADE AVAILABLE TO STAKE-
43 HOLDERS IN SUCH PROCEEDING, THE COMMISSION SHALL ISSUE AN ORDER IMPE-
44 MENTING SUCH MECHANISM NO LATER THAN JULY FIRST, TWO THOUSAND SIXTEEN.

45 2. FOR THE PURPOSES OF THIS SECTION AND SECTION SEVENTY-SEVEN-A OF
46 THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

47 A. "COMPETITIVE ADVANTAGE" SHALL MEAN ANY ADVANTAGE OR BENEFIT, FINAN-
48 CIAL OR OTHERWISE, THAT EXISTS FOR AN OUT-OF-STATE POWER GENERATOR IN
49 CONNECTION WITH THE IMPOSITION OF THE REQUIREMENTS OF THE REGIONAL
50 GREENHOUSE GAS INITIATIVE, ESTABLISHED BY REGULATION OF THE NEW YORK
51 STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ON IN-STATE POWER GENER-
52 ATORS. A "COMPETITIVE ADVANTAGE" MAY INCLUDE, AMONG OTHER THINGS,
53 AVOIDED COSTS SUCH AS INFRASTRUCTURE IMPROVEMENTS, TAXES, PENALTIES,
54 COSTS OF ENVIRONMENTAL COMPLIANCE, AND ADMINISTRATIVE AND REPORTING
55 COSTS.

1 B. "IN-STATE POWER GENERATOR" SHALL MEAN A POWER GENERATOR PHYSICALLY
2 LOCATED IN NEW YORK STATE.

3 C. "OUT-OF-STATE POWER GENERATOR" SHALL MEAN A POWER GENERATOR PHYS-
4 ICALLY LOCATED IN A STATE OR PROVINCE THAT DOES NOT PARTICIPATE IN THE
5 REGIONAL GREENHOUSE GAS INITIATIVE, ESTABLISHED BY REGULATION OF THE NEW
6 YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THAT IS SELLING
7 POWER IN NEW YORK STATE.

8 S 3. This act shall take effect immediately.