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I N A S S E M B L Y

April 3, 2014

Introduced by M. of A. BRENNAN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to creating a New York independent system operator

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

1 Section 1. The public service law is amended by adding a new article
2 12 to read as follows:

3 ARTICLE 12

4 PROVISIONS RELATING TO AN INDEPENDENT SYSTEM OPERATOR

5 SECTION 250. LEGISLATIVE STATEMENT.

6 251. INDEPENDENT SYSTEM OPERATOR.

7 252. POWERS OF THE COMMISSION.

8 S 250. LEGISLATIVE STATEMENT. THE NEW YORK STATE GOVERNMENT ESTAB-
9 LISHED THE PUBLIC SERVICE COMMISSION IN NINETEEN HUNDRED SEVEN TO REGU-
10 LATE THE UTILITY INDUSTRY THAT HAD BECOME A MONOPOLY. IN THE NINETEEN
11 THIRTIES AND NINETEEN FORTIES, THE FEDERAL GOVERNMENT STRENGTHENED REGU-
12 LATION OF THE INDUSTRY IN THE AREAS OF SECURITIES, WHOLESALE RATES AND
13 COST ACCOUNTING.

14 SINCE THE LATE NINETEEN NINETIES, THE NEW YORK ELECTRIC UTILITY INDUS-
15 TRY HAS CHANGED FROM AN INDUSTRY WHERE CUSTOMERS PAID ELECTRIC BILLS AT
16 COST-BASED REGULATED RATES TO A PARTIALLY DEREGULATED INDUSTRY IN WHICH
17 RATES FOR THE GENERATION OF ELECTRICITY ARE NO LONGER REGULATED BY STATE
18 GOVERNMENT.

19 IN NINETEEN NINETY-SIX, THE PUBLIC SERVICE COMMISSION DECIDED TO
20 DEREGULATE THE INDUSTRY WITHOUT LEGISLATIVE APPROVAL, AND REQUIRED UTIL-
21 ITIES TO DIVEST THEMSELVES OF THEIR GENERATION FACILITIES. IN NINETEEN
22 HUNDRED NINETY-NINE, A NEW ENTITY, CALLED THE NEW YORK INDEPENDENT
23 SYSTEM OPERATOR, OR NYISO, WAS FORMED FOR THE PURPOSE OF CREATING AN
24 EXCHANGE FOR THE SALE AND PURCHASE OF ELECTRICITY ON THE WHOLESALE
25 MARKET. IT WAS ARGUED THAT THIS NEW SYSTEM WOULD PROMOTE AND ENHANCE
26 COMPETITION, AND WOULD RESULT IN LOWER COSTS TO NEW YORK'S RETAIL
27 CUSTOMERS. UNFORTUNATELY, NEW YORKERS TODAY CONTINUE TO PAY AMONG THE
28 HIGHEST ELECTRIC BILLS IN THE COUNTRY.

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

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1 THE LEGISLATURE IS CONCERNED THAT THESE HIGH ELECTRIC BILLS NOT ONLY
2 PLACE A FINANCIAL BURDEN ON NEW YORKERS DURING THIS TIME OF ECONOMIC
3 SLOWDOWN BUT ALSO DISCOURAGE BUSINESSES FROM FORMING OR COMING INTO THIS
4 STATE. THE LEGISLATURE BELIEVES THAT THE PUBLIC SERVICE COMMISSION
5 SHOULD BE EMPOWERED TO OVERSEE AND MONITOR THE OPERATIONS OF NYISO TO
6 ENSURE THAT ITS ACTIONS AND DECISIONS ARE IN THE BEST INTEREST OF ALL
7 NEW YORKERS.

8 S 251. INDEPENDENT SYSTEM OPERATOR. 1. THERE IS HEREBY CREATED A
9 CORPORATE ENTITY TO BE KNOWN AS THE "NEW YORK INDEPENDENT SYSTEM OPERA-
10 TOR" OR "NYISO". THE ENTITY SHALL BE A BODY CORPORATE AND SHALL BE
11 FORMED AS A NOT-FOR-PROFIT CORPORATION AND SHALL BE SUBJECT TO THE
12 PROVISIONS OF THIS ARTICLE AND OF THE NOT-FOR-PROFIT CORPORATION LAW.
13 SUCH ENTITY SHALL BE APPROVED BY THE FEDERAL ENERGY REGULATORY COMMIS-
14 SION TO MONITOR, MANAGE AND ADMINISTER THE WHOLESALE ELECTRICITY MARKET
15 IN THIS STATE.

16 2. THE INTERNAL OPERATIONS OF THE INDEPENDENT SYSTEM OPERATOR SHALL BE
17 GOVERNED AND OPERATED IN ACCORDANCE WITH THE BYLAWS OF THE CORPORATION,
18 WHICH SHALL BE SUBJECT TO THE APPROVAL OF THE COMMISSION. THE BYLAWS
19 SHALL SPECIFY THE PROCESS BY WHICH THE APPROPRIATE STAKEHOLDERS OF THE
20 CORPORATION ELECT ITS DIRECTORS AND PRESCRIBE PROFESSIONAL QUALIFICA-
21 TIONS FOR SELECTION AS A DIRECTOR. THE GOVERNING BOARD OF THE CORPO-
22 RATION SHALL CONSIST OF AT LEAST SEVEN MEMBERS, SUBJECT TO THE FOLLOW-
23 ING:

24 (A) THE CHAIR OF THE COMMISSION SHALL BE AN EX-OFFICIO NON-VOTING
25 MEMBER;

26 (B) ALL DIRECTORS SHALL POSSESS SUFFICIENT AND RELEVANT KNOWLEDGE OR
27 EXPERIENCE IN THE ELECTRIC INDUSTRY, SUCH AS ELECTRIC REGULATORY
28 AFFAIRS, UTILITY MANAGEMENT, BULK POWER SYSTEMS, POWER POOL OPERATIONS,
29 CORPORATE FINANCE, CONSUMER ADVOCACY OR ENVIRONMENTAL AFFAIRS;

30 (C) THE CHAIR OF THE GOVERNING BOARD SHALL NOT BE AN EMPLOYEE OF THE
31 INDEPENDENT SYSTEM OPERATOR; AND

32 (D) ALL DIRECTORS SHALL BE RESIDENTS OF THE STATE.

33 3. THE INDEPENDENT SYSTEM OPERATOR SHALL CONDUCT ITS OPERATIONS
34 CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAWS AND CONSISTENT WITH
35 THE INTERESTS OF THE PEOPLE OF THE STATE. THE INDEPENDENT SYSTEM OPERA-
36 TOR SHALL MANAGE THE TRANSMISSION GRID AND RELATED ENERGY MARKETS IN A
37 MANNER THAT IS CONSISTENT WITH ALL OF THE FOLLOWING:

38 (A) OPERATING OPEN, FAIR AND COMPETITIVE WHOLESALE ELECTRICITY
39 MARKETS;

40 (B) REDUCING, TO THE EXTENT POSSIBLE, OVERALL ECONOMIC COST TO THE
41 STATE'S CONSUMERS;

42 (C) ADOPTING INSPECTION, MAINTENANCE AND REPAIR STANDARDS FOR THE
43 TRANSMISSION FACILITIES UNDER ITS CONTROL. SUCH STANDARDS SHALL PROVIDE
44 FOR HIGH QUALITY, SAFE AND RELIABLE SERVICE;

45 (D) COMPLYING WITH APPLICABLE STATE LAWS INTENDED TO PROTECT THE
46 PUBLIC'S HEALTH, SAFETY AND WELFARE;

47 (E) MAXIMIZING AVAILABILITY OF EXISTING ELECTRIC GENERATION RESOURCES
48 NECESSARY TO MEET THE NEEDS OF THE STATE'S ELECTRICITY CUSTOMERS;

49 (F) ENSURING ACCESS TO THE TRANSMISSION AND DISTRIBUTION SYSTEMS FOR
50 ALL BUYERS AND SELLERS OF ELECTRICITY ON NONDISCRIMINATORY TERMS;

51 (G) MAINTAINING AND ENHANCING THE RELIABILITY AND ADEQUACY OF THE
52 REGIONAL ELECTRICAL NETWORK; AND

53 (H) CONDUCTING INTERNAL OPERATIONS IN A MANNER THAT MINIMIZES COST
54 IMPACT ON RATEPAYERS TO THE EXTENT PRACTICABLE AND CONSISTENT WITH THE
55 PROVISIONS OF THIS ARTICLE.

56 4. THE INDEPENDENT SYSTEM OPERATOR SHALL ALSO DO ALL OF THE FOLLOWING:

1 (A) CONSULT AND COORDINATE WITH APPROPRIATE STATE AND LOCAL AGENCIES
2 TO ENSURE THAT THE INDEPENDENT SYSTEM OPERATOR OPERATES IN FURTHERANCE
3 OF STATE LAW REGARDING CONSUMER AND ENVIRONMENTAL PROTECTION;

4 (B) ENSURE THAT THE PURPOSES AND FUNCTIONS OF THE INDEPENDENT SYSTEM
5 OPERATOR ARE CONSISTENT WITH THE PURPOSES AND FUNCTIONS OF NOT-FOR-PRO-
6 FIT CORPORATIONS IN THE STATE, INCLUDING DUTIES OF CARE AND
7 CONFLICT-OF-INTEREST STANDARDS FOR OFFICERS AND DIRECTORS OF A CORPO-
8 RATION REQUIRED UNDER THE NOT-FOR-PROFIT CORPORATION LAW; AND

9 (C) COMPLY WITH THE PROVISIONS OF ARTICLES SIX AND SEVEN OF THE PUBLIC
10 OFFICERS LAW.

11 5. (A) THE INDEPENDENT SYSTEM OPERATOR SHALL DISCLOSE PRICE DATA
12 RELATED TO ITS WHOLESALE MARKET OPERATIONS INCLUDING, BUT NOT LIMITED
13 TO, INFORMATION ON REAL-TIME, HOUR-AHEAD AND DAY-AHEAD BIDS IN THE INDE-
14 PENDENT SYSTEM OPERATOR'S WHOLESALE ELECTRICITY MARKET AUCTIONS, TRANS-
15 MISSION CONGESTION CONTRACT AUCTIONS AND INSTALLED CAPACITY MARKET
16 AUCTIONS WITH NO MORE THAN A THREE MONTH DELAY. SUCH DATA SHALL BE
17 PROVIDED IN AGGREGATE HOURLY, DAILY, MONTHLY, ANNUAL AND HISTORICAL DATA
18 SETS FOR COMPARISON PURPOSES AND SHALL ALSO REFLECT SEASONAL AND PEAK
19 LOAD VARIATIONS AND AVERAGES.

20 (B) THE INDEPENDENT SYSTEM OPERATOR SHALL PREPARE AND ISSUE TO THE
21 GOVERNOR AND THE STATE LEGISLATURE A MONTHLY REPORT SHOWING THE PRICE
22 TRANSACTIONS BETWEEN THE WHOLESALE GENERATOR OR POWER PRODUCER AND THE
23 INDEPENDENT SYSTEM OPERATOR, AND BETWEEN THE INDEPENDENT SYSTEM OPERATOR
24 AND ENTITIES THAT DISTRIBUTE THE ELECTRICITY. THE REPORT SHALL BE BASED
25 ON TRANSACTIONS OCCURRING THREE MONTHS PRIOR TO THE DATE OF THE REPORT
26 OR ANALYSIS, BROKEN DOWN BY MARKET ZONES, AND SHALL INCLUDE AT A MINI-
27 MUM:

28 (I) THE QUANTITY OF ELECTRICITY PURCHASED AND SOLD;

29 (II) THE PRICE PAID FOR THE ELECTRICITY; AND

30 (III) THE SELLERS AND PURCHASERS OF THE WHOLESALE ELECTRICITY.

31 (C) THE INDEPENDENT SYSTEM OPERATOR SHALL DISCLOSE THE NAMES OF ANY
32 PERSON OR ENTITY THAT SUBMITS A BID IN ANY OF THE AUCTIONS DESCRIBED IN
33 PARAGRAPH (A) OF THIS SUBDIVISION AND THE AMOUNT OF THE BID. SUCH INFOR-
34 MATION SHALL BE MADE IN A FORMAT READILY AVAILABLE AND ACCESSIBLE TO THE
35 PUBLIC.

36 6. THE INDEPENDENT SYSTEM OPERATOR SHALL APPOINT AN EMPLOYEE TO SERVE
37 AS CONSUMER LIAISON, WHOSE PRIMARY DUTY SHALL BE TO INTERACT WITH RETAIL
38 CUSTOMERS OR OTHER END-USERS FOR THE PURPOSES OF:

39 (A) KEEPING RETAIL CUSTOMERS INFORMED ABOUT DEVELOPMENTS THAT MAY
40 AFFECT THEIR INTERESTS;

41 (B) EXPLAINING THE ISSUES AND PROPOSALS UNDER DISCUSSION AND PROPOSED
42 FOR CONSIDERATION BY THE COMMITTEES OF THE CORPORATION AS WELL AS THE
43 RAMIFICATIONS OF ANY SUCH ISSUES OR PROPOSALS ON RESIDENTIAL AND OTHER
44 CUSTOMERS;

45 (C) RESPONDING TO THE QUESTIONS AND CONCERNS OF RETAIL CUSTOMERS; AND

46 (D) SERVING AS THE LIAISON BETWEEN THE RETAIL CUSTOMERS AND THE
47 MEMBERS OF THE GOVERNING BOARD WHO ARE DESIGNATED OR ASSIGNED TO FOCUS
48 ON THE INTERESTS OF THE RESIDENTIAL, SMALL BUSINESS AND FARM ELECTRICITY
49 USERS.

50 S 252. POWERS OF THE COMMISSION. 1. THE INDEPENDENT SYSTEM OPERATOR IS
51 DIRECTLY RESPONSIBLE AND ACCOUNTABLE TO THE COMMISSION AS PROVIDED IN
52 THIS SECTION. THE COMMISSION HAS COMPLETE AUTHORITY TO OVERSEE AND
53 INVESTIGATE SUCH OPERATOR'S FINANCES, BUDGET, AND OPERATIONS AS NECES-
54 SARY TO ENSURE THAT THE OPERATOR HAS PERFORMED ITS FUNCTIONS AND DUTIES
55 IN ACCORDANCE WITH ALL APPLICABLE FEDERAL AND STATE LAWS OR REGULATIONS.

1 2. THE COMMISSION SHALL PROVIDE OVERSIGHT AND MONITOR THE MARKET AND
2 CORPORATE OPERATIONS OF THE INDEPENDENT SYSTEM OPERATOR, INCLUDING BUT
3 NOT LIMITED TO, THE EXTENT TO WHICH IT:

4 (A) SERVES THE NEEDS OF ALL CUSTOMER CLASSES AND OPERATES IN A MANNER
5 THAT IS IN THE BEST INTEREST OF THE PUBLIC;

6 (B) ENSURES RELIABILITY, QUALITY AND MAINTENANCE OF THE TRANSMISSION
7 SYSTEM; AND

8 (C) CONTRIBUTES TO THE ACHIEVEMENT OF ENERGY EFFICIENCY AND FUEL
9 DIVERSITY GOALS OF THE STATE.

10 3. THE COMMISSION SHALL ALSO BE AUTHORIZED TO:

11 (A) REQUIRE THE INDEPENDENT SYSTEM OPERATOR TO PROVIDE REPORTS AND
12 INFORMATION RELATING TO THE CORPORATION'S REVENUES, EXPENSES AND OTHER
13 FINANCIAL MATTERS; AND RELATING TO THE CORPORATION'S PERFORMANCE OF THE
14 FUNCTIONS PRESCRIBED BY ALL APPLICABLE FEDERAL OR STATE LAWS OR AS SET
15 FORTH IN ITS AGREEMENTS WITH ELECTRIC AND GAS CORPORATIONS AND OTHER
16 UTILITIES;

17 (B) PRESCRIBE A SYSTEM OF ACCOUNTS FOR THE INDEPENDENT SYSTEM OPERA-
18 TOR;

19 (C) REVIEW THE BIDDING AUCTIONS USED BY THE INDEPENDENT SYSTEM OPERA-
20 TOR, INCLUDING THE UNIFORM PRICE AUCTION, TO DETERMINE WHETHER SUCH
21 AUCTIONS ARE IN THE BEST INTEREST OF THIS STATE'S RETAIL CUSTOMERS AND
22 TO ENSURE THAT THEY ARE FAIR AND OBJECTIVE, FREE OF COLLUSION AND
23 CONFLICTS OF INTEREST;

24 (D) CONDUCT AUDITS OF THE REPORTS AND INFORMATION ISSUED OR SUBMITTED
25 PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. THE COMMISSION MAY RETAIN
26 OR CONTRACT WITH AN INDEPENDENT FIRM OR ORGANIZATION TO CONDUCT SUCH
27 AUDIT;

28 (E) INSPECT THE INDEPENDENT SYSTEM OPERATOR'S FACILITIES, RECORDS AND
29 ACCOUNTS DURING REASONABLE HOURS AND AFTER REASONABLE NOTICE TO THE
30 INDEPENDENT ORGANIZATION;

31 (F) ASSESS ADMINISTRATIVE PENALTIES AGAINST THE INDEPENDENT SYSTEM
32 OPERATOR FOR VIOLATING ANY PROVISION OF THIS ARTICLE, OR A RULE OR ORDER
33 ADOPTED BY THE COMMISSION. AT THE REQUEST OF THE COMMISSION, THE ATTOR-
34 NEY GENERAL MAY APPLY FOR A COURT ORDER TO REQUIRE THE INDEPENDENT
35 SYSTEM OPERATOR TO COMPLY WITH COMMISSION RULES AND ORDERS; AND

36 (G) RESOLVE DISPUTES BETWEEN RETAIL CUSTOMERS OR OTHER END-USERS AND
37 THE INDEPENDENT SYSTEM OPERATOR, AND ADOPT PROCEDURES FOR THE EFFICIENT
38 RESOLUTION OF SUCH DISPUTES.

39 4. (A) THE COMMISSION SHALL ANNUALLY ISSUE A REPORT RELATING THE
40 MARKET AND CORPORATE OPERATIONS OF THE INDEPENDENT SYSTEM OPERATOR. SUCH
41 REPORTS SHALL INCLUDE, BUT NOT BE LIMITED TO:

42 (I) ANALYSES BY THE INDEPENDENT SYSTEM OPERATOR AND OTHER DATA
43 COLLECTED AND ANALYZED BY THE COMMISSION ON REAL-TIME, HOUR-AHEAD AND
44 DAY-AHEAD MARKET BIDS AND BIDDERS IN THE INDEPENDENT SYSTEM OPERATOR'S
45 WHOLESALE ELECTRICITY MARKET AUCTIONS, TRANSMISSION CONGESTION CONTRACT
46 AUCTIONS AND INSTALLED MARKET AUCTIONS;

47 (II) A DETERMINATION OF WHETHER OR NOT ALL CUSTOMER CLASSES ARE BEING
48 ADEQUATELY SERVED BY COMPETITIVE ENERGY MARKETS;

49 (III) A DETERMINATION OF THE COMPETITIVENESS OF ENERGY MARKETS;
50 INCLUDING A DETERMINATION WHETHER OR NOT THE ELECTRIC INDUSTRY IS
51 PROVIDING CONSUMERS WITH THE LOWEST PRICES POSSIBLE WITHIN A RESTRUC-
52 TURED, COMPETITIVE MARKETPLACE;

53 (IV) A DETERMINATION OF THE EXTENT TO WHICH THE ENERGY MARKETS ARE
54 ACHIEVING THE ENERGY EFFICIENCY AND FUEL DIVERSITY GOALS OF THE STATE;

55 (V) THE INDEPENDENT SYSTEM OPERATOR'S FINANCIAL INFORMATION;

1 (VI) A COST ANALYSIS COMPARING THE AVERAGE MONTHLY COST OF A RETAIL
2 CUSTOMER UNDER THE CURRENT FEDERALLY REGULATED MARKET WITH THE AVERAGE
3 MONTHLY COSTS TO THE SAME OR SIMILAR CUSTOMER IF THE MARKET WAS REGU-
4 LATED BY THE COMMISSION. SUCH ANALYSIS SHALL BE BROKEN DOWN INTO SEPA-
5 RATE CATEGORIES INCLUDING, BUT NOT LIMITED TO, UTILITY SERVICE AREAS;
6 CUSTOMER TYPES, SUCH AS RESIDENTIAL, COMMERCIAL, INDUSTRIAL; AND ANY
7 OTHER CATEGORY DETERMINED BY THE COMMISSION; AND

8 (VII) RECOMMENDATIONS FOR IMPROVING ANY DEFICIENCIES SO IDENTIFIED IN
9 ELECTRICITY ENERGY MARKETS, INCLUDING NON-COMPETITIVE PRICING SITU-
10 ATIONS.

11 (B) THE COMMISSION SHALL SUBMIT SUCH REPORT TO THE GOVERNOR, THE
12 TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE
13 CHAIRS OF THE ENERGY AND THE CORPORATIONS, AUTHORITIES AND COMMISSIONS
14 COMMITTEES OF THE SENATE AND THE ASSEMBLY, NO LATER THAN DECEMBER FIRST,
15 TWO THOUSAND FOURTEEN AND ANNUALLY THEREAFTER.

16 S 2. Severability. If any clause, sentence, paragraph, section or part
17 of this act shall be adjudged by any court of competent jurisdiction to
18 be invalid, the judgment shall not affect, impair, or invalidate the
19 remainder thereof, but shall be confined in its operation to the clause,
20 sentence, paragraph, section or part thereof directly involved in the
21 controversy in which the judgment shall have been rendered.

22 S 3. This act shall take effect immediately.