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I N   A S S E M B L Y

February 25, 2014

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Introduced by M. of A. QUART -- read once and referred to the Committee on Energy

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 ASSEMBLY, 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 GENERA-  
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  
27    RETENTION AND CREATION IN THE POWER GENERATION SECTOR IN THE STATE OF  
28    NEW YORK, AND TO SEEK TO LIMIT POLLUTION AND ENVIRONMENTAL DEGRADATION

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

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1 WHETHER IT EMANATES FROM WITHIN THE STATE OR FROM ANOTHER STATE. THE  
2 COMMISSION WORKING WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOP-  
3 MENT AUTHORITY AND THE FEDERALLY DESIGNATED BULK SYSTEM OPERATOR, ARE  
4 THE STATE ENTITIES WITH THE EXPERTISE AND AUTHORITY TO RECTIFY THIS  
5 PROBLEM THROUGH APPROPRIATE REGULATORY ACTIVITY.

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

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

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

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

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

54 B. "IN-STATE POWER GENERATOR" SHALL MEAN A POWER GENERATOR PHYSICALLY  
55 LOCATED IN NEW YORK STATE.

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