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Introduced by M. of A. BRENNAN, COLTON, OTIS, MOSLEY, BRINDISI, GOTTFRIED, STECK, SCHIMEL -- Multi-Sponsored by -- M. of A. GLICK, MARKEY, SOLAGES -- 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:

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

ARTICLE 12

PROVISIONS RELATING TO AN INDEPENDENT SYSTEM OPERATOR

SECTION 250. LEGISLATIVE STATEMENT.
251. INDEPENDENT SYSTEM OPERATOR.
252. POWERS OF THE COMMISSION.

S 250. LEGISLATIVE STATEMENT. THE NEW YORK STATE GOVERNMENT ESTABLISHED THE PUBLIC SERVICE COMMISSION IN NINETEEN HUNDRED SEVEN TO REGULATE THE UTILITY INDUSTRY THAT HAD BECOME A MONOPOLY. IN THE NINETEEN THIRTIES AND NINETEEN FORTIES, THE FEDERAL GOVERNMENT STRENGTHENED REGULATION OF THE INDUSTRY IN THE AREAS OF SECURITIES, WHOLESALE RATES AND COST ACCOUNTING.

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

IN NINETEEN NINETY-SIX, THE PUBLIC SERVICE COMMISSION DECIDED TO DEREGULATE THE INDUSTRY WITHOUT LEGISLATIVE APPROVAL, AND REQUIRED UTILITIES TO DIVEST THEMSELVES OF THEIR GENERATION FACILITIES. IN NINETEEN HUNDRED NINETY-NINE, A NEW ENTITY, CALLED THE NEW YORK INDEPENDENT SYSTEM OPERATOR, OR NYISO, WAS FORMED FOR THE PURPOSE OF CREATING AN

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

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EXCHANGE FOR THE SALE AND PURCHASE OF ELECTRICITY ON THE WHOLESALE MARKET. IT WAS ARGUED THAT THIS NEW SYSTEM WOULD PROMOTE AND ENHANCE COMPETITION, AND WOULD RESULT IN LOWER COSTS TO NEW YORK'S RETAIL CUSTOMERS. UNFORTUNATELY, NEW YORKERS TODAY CONTINUE TO PAY AMONG THE HIGHEST ELECTRIC BILLS IN THE COUNTRY.

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

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

2. THE INTERNAL OPERATIONS OF THE INDEPENDENT SYSTEM OPERATOR SHALL BE GOVERNED AND OPERATED IN ACCORDANCE WITH THE BYLAWS OF THE CORPORATION, WHICH SHALL BE SUBJECT TO THE APPROVAL OF THE COMMISSION. THE BYLAWS SHALL SPECIFY THE PROCESS BY WHICH THE APPROPRIATE STAKEHOLDERS OF THE CORPORATION ELECT ITS DIRECTORS AND PRESCRIBE PROFESSIONAL QUALIFICATIONS FOR SELECTION AS A DIRECTOR. THE GOVERNING BOARD OF THE CORPORATION SHALL CONSIST OF AT LEAST SEVEN MEMBERS, SUBJECT TO THE FOLLOWING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) THE QUANTITY OF ELECTRICITY PURCHASED AND SOLD;

(II) THE PRICE PAID FOR THE ELECTRICITY; AND

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

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

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

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

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

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

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

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

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

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

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

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

3. THE COMMISSION SHALL ALSO BE AUTHORIZED TO:

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

(B) PRESCRIBE A SYSTEM OF ACCOUNTS FOR THE INDEPENDENT SYSTEM OPERATOR;

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

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

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

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

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

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

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

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

(III) A DETERMINATION OF THE COMPETITIVENESS OF ENERGY MARKETS; INCLUDING A DETERMINATION WHETHER OR NOT THE ELECTRIC INDUSTRY IS

PROVIDING CONSUMERS WITH THE LOWEST PRICES POSSIBLE WITHIN A RESTRUCTURED, COMPETITIVE MARKETPLACE;

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

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

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

(VII) RECOMMENDATIONS FOR IMPROVING ANY DEFICIENCIES SO IDENTIFIED IN ELECTRICITY ENERGY MARKETS, INCLUDING NON-COMPETITIVE PRICING SITUATIONS.

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

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

S 3. This act shall take effect immediately.