S T A T E O F N E W Y O R K

4666

2015-2016 Regular Sessions

I N A S S E M B L Y

February 5, 2015

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:

Section 1. The public service law is amended by adding a new section 77-a to read as follows:

S 77-A. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT IT IS IN THE BEST PUBLIC POLICY INTERESTS OF THE STATE, ITS BUSINESSES AND ITS CITIZENS TO ENSURE THAT, TO THE GREATEST EXTENT POSSIBLE, THE LETTER AND SPIRIT OF ITS ENVIRONMENTAL REGULATIONS AIMED AT REDUCING CARBON DIOXIDE EMISSIONS AND IMPROVING AIR QUALITY UNDER THE REGIONAL GREENHOUSE GAS INITIATIVE (RGGI), ESTABLISHED BY REGULATION OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ARE ENFORCED FOR ANY GENERATOR WHO DOES BUSINESS IN THE NEW YORK STATE ENERGY MARKET.

THIS POLICY CHANGE IS NECESSARY BECAUSE STATES THAT SURROUND NEW YORK THAT DO NOT PARTICIPATE IN RGGI, BUT WHO DO EXPORT POWER TO NEW YORK STATE, HAVE A DISTINCT COMPETITIVE ADVANTAGE OVER IN-STATE POWER GENERATORS. WHILE THE GOALS OF THE RGGI PROGRAM ARE LAUDABLE, IN-STATE FOSSIL FUEL GENERATORS ARE EXPERIENCING SIGNIFICANT INCREASES IN THEIR COSTS AS A RESULT OF THE NEED TO BUY CARBON DIOXIDE EMISSION ALLOWANCES IN THE RGGI AUCTION, ESTABLISHED BY REGULATION OF THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT AUTHORITY. HOWEVER, OUT-OF-STATE FOSSIL FUEL GENERATORS IN NON-RGGI STATES MAY USE THE SAME EXACT FUEL AND PRODUCE THE GREATER EMISSIONS ASSOCIATED WITH THAT FUEL, BUT ARE STILL ABLE TO EXPORT POWER TO NEW YORK AT A CHEAPER PRICE BECAUSE THEY ARE NOT SUBJECT TO THE COSTS ASSOCIATED WITH RGGI. THIS STATE OF AFFAIRS HURTS IN-STATE POWER GENERATORS, THREATENS JOBS AND ENCOURAGES THE IMPORTATION OF POLLUTION INTENSIVE POWER FROM OTHER STATES.

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

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THE LEGISLATURE FURTHER DECLARES THAT IT IS IN THE BEST ECONOMIC AND ENVIRONMENTAL INTERESTS OF THE STATE TO ADOPT POLICIES THAT SUPPORT JOB RETENTION AND CREATION IN THE POWER GENERATION SECTOR IN THE STATE OF NEW YORK, AND TO SEEK TO LIMIT POLLUTION AND ENVIRONMENTAL DEGRADATION WHETHER IT EMANATES FROM WITHIN THE STATE OR FROM ANOTHER STATE. THE COMMISSION WORKING WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AND THE FEDERALLY DESIGNATED BULK SYSTEM OPERATOR, ARE THE STATE ENTITIES WITH THE EXPERTISE AND AUTHORITY TO RECTIFY THIS PROBLEM THROUGH APPROPRIATE REGULATORY ACTIVITY.

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

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

S 77-B. REGIONAL GREENHOUSE GAS INITIATIVE; EFFECT ON ELECTRICITY MARKETS. 1. THE COMMISSION IS HEREBY AUTHORIZED AND DIRECTED TO DEVELOP A MECHANISM FOR THE PURPOSE OF ELIMINATING, OR MINIMIZING TO THE GREATEST EXTENT PRACTICABLE, THE COMPETITIVE ADVANTAGES IN THE STATE'S ELECTRICITY MARKETS THAT OUT-OF-STATE POWER GENERATORS HAVE OVER IN-STATE POWER GENERATORS DUE TO NEW YORK STATE'S PARTICIPATION IN THE REGIONAL GREENHOUSE GAS INITIATIVE, ESTABLISHED BY REGULATION OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. SUCH MECHANISM SHALL BE DEVELOPED PURSUANT TO A STAKEHOLDER PROCESS THROUGH A PROCEEDING TO BE ESTABLISHED BY THE COMMISSION WITHIN ONE MONTH OF THE ENACTMENT OF THIS SECTION. THE COMMISSION MAY, IN ITS DISCRETION, CONSULT WITH THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AND THE FEDERALLY DESIGNATED BULK SYSTEM OPERATOR SERVING NEW YORK STATE'S ELECTRIC SYSTEM IN DEVELOPING SUCH MECHANISM. WITHIN SIX MONTHS OF THE COMMISSION HAVING ESTABLISHED A PROCEEDING PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL ISSUE A REPORT, BASED UPON THE STAKEHOLDER PROCESS IN SUCH PROCEEDING, THAT DESCRIBES THE MECHANISM, ITS FUNCTION, ITS POSITIVE ATTRIBUTES, AND ANY OF ITS ANTICIPATED NEGATIVE CONSEQUENCES, AS WELL AS HOW THOSE CONSEQUENCES COULD BE MINIMIZED OR MITIGATED. SUCH REPORT SHALL BE PROVIDED FOR PUBLIC STAKEHOLDER REVIEW AND COMMENT DURING A THREE MONTH PERIOD. WITHIN ONE MONTH OF COMPLETING THE PUBLIC STAKEHOLDER REVIEW AND COMMENT PERIOD ON SUCH REPORT, THE COMMISSION SHALL REVISE SUCH MECHANISM, AS NEEDED AND TAKING INTO ACCOUNT SUCH PUBLIC STAKEHOLDER COMMENTS, AS THE COMMISSION DEEMS TO BE IN THE PUBLIC INTEREST AND CONSISTENT WITH THE LEGISLATIVE INTENT EXPRESSED PURSUANT TO SECTION SEVENTY-SEVEN-A OF THIS ARTICLE. WITHIN THREE MONTHS OF SUCH MECHANISM HAVING BEEN REVISED, AS NEEDED, AND MADE AVAILABLE TO STAKEHOLDERS IN SUCH PROCEEDING, THE COMMISSION SHALL ISSUE AN ORDER IMPLEMENTING SUCH MECHANISM NO LATER THAN JULY FIRST, TWO THOUSAND EIGHTEEN.

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

A. "COMPETITIVE ADVANTAGE" SHALL MEAN ANY ADVANTAGE OR BENEFIT, FINANCIAL OR OTHERWISE, THAT EXISTS FOR AN OUT-OF-STATE POWER GENERATOR IN CONNECTION WITH THE IMPOSITION OF THE REQUIREMENTS OF THE REGIONAL GREENHOUSE GAS INITIATIVE, ESTABLISHED BY REGULATION OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ON IN-STATE POWER GENERATORS. A "COMPETITIVE ADVANTAGE" MAY INCLUDE, AMONG OTHER THINGS, AVOIDED COSTS SUCH AS INFRASTRUCTURE IMPROVEMENTS, TAXES, PENALTIES,

COSTS OF ENVIRONMENTAL COMPLIANCE, AND ADMINISTRATIVE AND REPORTING COSTS.

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

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

S 3. This act shall take effect immediately.