

# STATE OF NEW YORK

1252

2017-2018 Regular Sessions

## IN SENATE

January 6, 2017

Introduced by Sen. FUNKE -- read twice 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 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.

§ 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 exchange for the sale and purchase of electricity on the wholesale

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

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1 market. It was argued that this new system would promote and enhance  
2 competition, and would result in lower costs to New York's retail  
3 customers. Unfortunately, New Yorkers today continue to pay among the  
4 highest electric bills in the country.

5 The legislature is concerned that these high electric bills not only  
6 place a financial burden on New Yorkers during this time of economic  
7 slowdown but also discourage businesses from forming or coming into this  
8 state. The legislature believes that the public service commission  
9 should be empowered to oversee and monitor the operations of NYISO to  
10 ensure that its actions and decisions are in the best interest of all  
11 New Yorkers.

12 § 251. Independent system operator. 1. There is hereby created a  
13 corporate entity to be known as the "New York independent system opera-  
14 tor" or "NYISO". The entity shall be a body corporate and shall be  
15 formed as a not-for-profit corporation and shall be subject to the  
16 provisions of this article and of the not-for-profit corporation law.  
17 Such entity shall be approved by the federal energy regulatory commis-  
18 sion to monitor, manage and administer the wholesale electricity market  
19 in this state.

20 2. The internal operations of the independent system operator shall be  
21 governed and operated in accordance with the bylaws of the corporation,  
22 which shall be subject to the approval of the commission. The bylaws  
23 shall specify the process by which the appropriate stakeholders of the  
24 corporation elect its directors and prescribe professional qualifica-  
25 tions for selection as a director. The governing board of the corpo-  
26 ration shall consist of at least seven members, subject to the follow-  
27 ing:

28 (a) the chair of the commission shall be an ex-officio non-voting  
29 member;

30 (b) all directors shall possess sufficient and relevant knowledge or  
31 experience in the electric industry, such as electric regulatory  
32 affairs, utility management, bulk power systems, power pool operations,  
33 corporate finance, consumer advocacy or environmental affairs;

34 (c) the chair of the governing board shall not be an employee of the  
35 independent system operator; and

36 (d) all directors shall be residents of the state.

37 3. The independent system operator shall conduct its operations  
38 consistent with applicable state and federal laws and consistent with  
39 the interests of the people of the state. The independent system opera-  
40 tor shall manage the transmission grid and related energy markets in a  
41 manner that is consistent with all of the following:

42 (a) operating open, fair and competitive wholesale electricity  
43 markets;

44 (b) reducing, to the extent possible, overall economic cost to the  
45 state's consumers;

46 (c) adopting inspection, maintenance and repair standards for the  
47 transmission facilities under its control. Such standards shall provide  
48 for high quality, safe and reliable service;

49 (d) complying with applicable state laws intended to protect the  
50 public's health, safety and welfare;

51 (e) maximizing availability of existing electric generation resources  
52 necessary to meet the needs of the state's electricity customers;

53 (f) ensuring access to the transmission and distribution systems for  
54 all buyers and sellers of electricity on nondiscriminatory terms;

55 (g) maintaining and enhancing the reliability and adequacy of the  
56 regional electrical network; and

1 (h) conducting internal operations in a manner that minimizes cost  
2 impact on ratepayers to the extent practicable and consistent with the  
3 provisions of this article.

4 4. The independent system operator shall also do all of the following:

5 (a) consult and coordinate with appropriate state and local agencies  
6 to ensure that the independent system operator operates in furtherance  
7 of state law regarding consumer and environmental protection;

8 (b) ensure that the purposes and functions of the independent system  
9 operator are consistent with the purposes and functions of not-for-pro-  
10 fit corporations in the state, including duties of care and conflict-of-  
11 interest standards for officers and directors of a corporation required  
12 under the not-for-profit corporation law; and

13 (c) comply with the provisions of articles six and seven of the public  
14 officers law.

15 5. (a) The independent system operator shall disclose price data  
16 related to its wholesale market operations including, but not limited  
17 to, information on real-time, hour-ahead and day-ahead bids in the inde-  
18 pendent system operator's wholesale electricity market auctions, trans-  
19 mission congestion contract auctions and installed capacity market  
20 auctions with no more than a three month delay. Such data shall be  
21 provided in aggregate hourly, daily, monthly, annual and historical data  
22 sets for comparison purposes and shall also reflect seasonal and peak  
23 load variations and averages.

24 (b) The independent system operator shall prepare and issue to the  
25 governor and the state legislature a monthly report showing the price  
26 transactions between the wholesale generator or power producer and the  
27 independent system operator, and between the independent system operator  
28 and entities that distribute the electricity. The report shall be based  
29 on transactions occurring three months prior to the date of the report  
30 or analysis, broken down by market zones, and shall include at a mini-  
31 mum:

32 (i) the quantity of electricity purchased and sold;

33 (ii) the price paid for the electricity; and

34 (iii) the sellers and purchasers of the wholesale electricity.

35 (c) The independent system operator shall disclose the names of any  
36 person or entity that submits a bid in any of the auctions described in  
37 paragraph (a) of this subdivision and the amount of the bid. Such infor-  
38 mation shall be made in a format readily available and accessible to the  
39 public.

40 6. The independent system operator shall appoint an employee to serve  
41 as consumer liaison, whose primary duty shall be to interact with retail  
42 customers or other end-users for the purposes of:

43 (a) keeping retail customers informed about developments that may  
44 affect their interests;

45 (b) explaining the issues and proposals under discussion and proposed  
46 for consideration by the committees of the corporation as well as the  
47 ramifications of any such issues or proposals on residential and other  
48 customers;

49 (c) responding to the questions and concerns of retail customers; and

50 (d) serving as the liaison between the retail customers and the  
51 members of the governing board who are designated or assigned to focus  
52 on the interests of the residential, small business and farm electricity  
53 users.

54 § 252. Powers of the commission. 1. The independent system operator is  
55 directly responsible and accountable to the commission as provided in  
56 this section. The commission has complete authority to oversee and

1 investigate such operator's finances, budget, and operations as neces-  
2 sary to ensure that the operator has performed its functions and duties  
3 in accordance with all applicable federal and state laws or regulations.

4 2. The commission shall provide oversight and monitor the market and  
5 corporate operations of the independent system operator, including but  
6 not limited to, the extent to which it:

7 (a) serves the needs of all customer classes and operates in a manner  
8 that is in the best interest of the public;

9 (b) ensures reliability, quality and maintenance of the transmission  
10 system; and

11 (c) contributes to the achievement of energy efficiency and fuel  
12 diversity goals of the state.

13 3. The commission shall also be authorized to:

14 (a) require the independent system operator to provide reports and  
15 information relating to the corporation's revenues, expenses and other  
16 financial matters; and relating to the corporation's performance of the  
17 functions prescribed by all applicable federal or state laws or as set  
18 forth in its agreements with electric and gas corporations and other  
19 utilities;

20 (b) prescribe a system of accounts for the independent system opera-  
21 tor;

22 (c) review the bidding auctions used by the independent system opera-  
23 tor, including the uniform price auction, to determine whether such  
24 auctions are in the best interest of this state's retail customers and  
25 to ensure that they are fair and objective, free of collusion and  
26 conflicts of interest;

27 (d) conduct audits of the reports and information issued or submitted  
28 pursuant to paragraph (a) of this subdivision. The commission may retain  
29 or contract with an independent firm or organization to conduct such  
30 audit;

31 (e) inspect the independent system operator's facilities, records and  
32 accounts during reasonable hours and after reasonable notice to the  
33 independent organization;

34 (f) assess administrative penalties against the independent system  
35 operator for violating any provision of this article, or a rule or order  
36 adopted by the commission. At the request of the commission, the attor-  
37 ney general may apply for a court order to require the independent  
38 system operator to comply with commission rules and orders; and

39 (g) resolve disputes between retail customers or other end-users and  
40 the independent system operator, and adopt procedures for the efficient  
41 resolution of such disputes.

42 4. (a) The commission shall annually issue a report relating the  
43 market and corporate operations of the independent system operator. Such  
44 reports shall include, but not be limited to:

45 (i) analyses by the independent system operator and other data  
46 collected and analyzed by the commission on real-time, hour-ahead and  
47 day-ahead market bids and bidders in the independent system operator's  
48 wholesale electricity market auctions, transmission congestion contract  
49 auctions and installed market auctions;

50 (ii) a determination of whether or not all customer classes are being  
51 adequately served by competitive energy markets;

52 (iii) a determination of the competitiveness of energy markets;  
53 including a determination whether or not the electric industry is  
54 providing consumers with the lowest prices possible within a restruc-  
55 tured, competitive marketplace;

1 (iv) a determination of the extent to which the energy markets are  
2 achieving the energy efficiency and fuel diversity goals of the state;

3 (v) the independent system operator's financial information;

4 (vi) a cost analysis comparing the average monthly cost of a retail  
5 customer under the current federally regulated market with the average  
6 monthly costs to the same or similar customer if the market was regu-  
7 lated by the commission. Such analysis shall be broken down into sepa-  
8 rate categories including, but not limited to, utility service areas;  
9 customer types, such as residential, commercial, industrial; and any  
10 other category determined by the commission; and

11 (vii) recommendations for improving any deficiencies so identified in  
12 electricity energy markets, including non-competitive pricing situ-  
13 ations.

14 (b) The commission shall submit such report to the governor, the  
15 temporary president of the senate, the speaker of the assembly, and the  
16 chairs of the energy and the corporations, authorities and commissions  
17 committees of the senate and the assembly, no later than December first,  
18 two thousand seventeen and annually thereafter.

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

25 § 3. This act shall take effect immediately.