

# STATE OF NEW YORK

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5549

2017-2018 Regular Sessions

## IN SENATE

April 10, 2017

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Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT in relation to maintaining the continued viability of the state's existing large-scale, renewable energy resources

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. The legislature hereby  
2 finds and determines:

3 1. New York is a national leader in developing and implementing policy  
4 to promote the development of renewable energy resources, the growth of  
5 which has significantly benefited the state in numerous ways, including  
6 through reductions in pollutants that contribute to climate change,  
7 associated reductions in adverse impacts on public health, and substan-  
8 tial job growth in the clean energy sector.

9 2. In 2016, more than twenty percent of the state's electric load  
10 (representing 2,354 gigawatt hours) was supplied by renewable resources  
11 - solar, wind, hydroelectric, biomass, fuel cells and similar resources.  
12 To further promote and incentivize the development of renewable energy,  
13 the New York state public service commission recently established a  
14 clean energy standard requiring, among other things, that fifty percent  
15 of the electric load in the state be served entirely by renewable  
16 resources by the year 2030 (i.e., 50 by 30 target).

17 3. A recent study shows that New York's clean energy sector now  
18 employs more than 85,000 workers at more than 7,500 business establish-  
19 ments spread out across the state, in both the renewable energy and  
20 energy efficiency sectors. With implementation of the clean energy stan-  
21 dard, clean energy jobs are anticipated to grow by more than six percent  
22 per year or double the growth rate of the entire United States economy  
23 in 2016. Proper implementation of the clean energy standard will ensure  
24 that the state meets these job growth projections.

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

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4. To promote achievement of the clean energy standard, and to ensure the continued job growth and other benefits attendant to a clean energy economy, New York needs to assure that its existing large-scale, renewable energy sector is provided with adequate price signals and financial incentives to remain in operation and to sell their renewable energy attributes in New York, allowing the state to count the resources toward the 50 by 30 target and retain the jobs and tax payments supported by these generators. Absent these assurances, it would be difficult if not impossible for the state to meet the recently established target.

5. New York's ability to meet the clean energy standard will be hampered if such existing resources provide their wholesale energy products for delivery to adjacent states, some of which have enacted laws that provide for a robust market that provides a stronger opportunity to sell renewable energy attributes than is currently available in New York. There is a real and present danger that a significant portion of New York's existing fleet of large-scale, renewable energy resources will participate in the programs offered by these other states and thus will not be available for consideration in terms of meeting the 50 by 30 target, and compete effectively with other renewable classes in the clean energy standard.

6. It also is of paramount importance to ensure the fuel diversity of the state's energy sector for the purposes of providing energy security, system reliability and protection of consumers from potential price spikes or shortages. For this same reason, it is important for the state to take measures to ensure the continued viability and competitive position of a wide variety of large-scale, renewable energy resources in the state.

7. Accordingly, the overlying intent of this act is to provide existing large-scale, renewable energy resources in New York state with appropriate financial incentives to continue operations for the foreseeable future.

§ 2. Definitions. 1. "Large-scale, renewable energy resource" means an electric generating facility that: (a) sells its energy in the wholesale markets operated by the New York independent system operator; (b) is deemed an eligible technology type pursuant to Appendix A of the "Order Adopting a Clean Energy Standard" and, in the case of hydropower, has a generating capacity less than 50 megawatts; (c) is physically located within the jurisdiction of the New York independent system operator; and (d) the associated energy is delivered in accordance with a New York delivery requirement as described in section three of this act.

2. "Eligible large-scale, renewable energy resource" means an existing large-scale, renewable energy resource that: (a) at the time in question is not under a contract for the sale of renewable energy credits with the New York state energy research and development authority pursuant to the renewable portfolio standard main tier or maintenance tier program or clean energy standard tier 1 program implemented by such authority; (b) is not under an existing contract for sale of renewable energy credits with a load serving entity; and (c) is otherwise found by the New York state energy research and development authority to meet deliverability requirements specified in section three of this act, and other eligibility requirements specified in subdivision one of this section.

3. "Load serving entity" or "load serving entities" means and includes all investor-owned distribution utilities (in their capacity as commodity suppliers), energy service companies, community choice aggregation programs not served by energy service companies, municipal utilities under the jurisdiction of the public service commission, and retail

1 customers that self-supply with electricity through the New York inde-  
2 pendent system operator.

3 4. "Renewable energy credit" means a tradable, non-tangible energy  
4 commodity that represents proof that 1 megawatt-hour (MWh) of electric-  
5 ity was generated from a renewable energy resource. To be eligible for  
6 sale in New York state and to meet the procurement obligations of load  
7 serving entities, each renewable energy credit must be registered with  
8 the New York generation attribute tracking systems.

9 5. "Tier 1" means the program designated as tier 1 pursuant to the  
10 clean energy standard order.

11 6. "Tier 2 renewable energy credit" refers to a renewable energy cred-  
12 it generated by an eligible large-scale, renewable energy resource.

13 7. "Order adopting a clean energy standard" means the public service  
14 commission order dated August 1, 2016, and entered in case number 15-E-  
15 0302 et seq.

16 § 3. Deliverability. Energy from an eligible large-scale, renewable  
17 energy resource shall be deemed to comply with the New York deliverabil-  
18 ity requirement if either it is: (a) delivered into a market adminis-  
19 tered by the New York independent system operator for end-use in New  
20 York state; (b) delivered through a wholesale meter under the control of  
21 a utility, public authority or municipal electric company such that it  
22 can be measured, and such that consumption within New York state can be  
23 tracked and verified by such entity or by the New York independent  
24 system operator; or (c) delivered through a renewable energy resource  
25 dedicated generation meter, approved by and subject to independent  
26 verification by the New York state energy research and development  
27 authority, to a customer in New York state.

28 § 4. Program for eligible large-scale, renewable energy resources.  
29 Notwithstanding any other provision of law to the contrary, including,  
30 but not limited to, any order, rule or regulation promulgated pursuant  
31 to the public service law, the public authorities law, and/or the state  
32 administrative procedure act, the public service commission, in consul-  
33 tation with the New York state energy research and development authori-  
34 ty, shall adopt a program within 120 days of the effective date of this  
35 act, to provide support to and for eligible large-scale, renewable ener-  
36 gy resources through a market for tier 2 renewable energy credits as  
37 defined herein to ensure the continued viability of eligible large-sca-  
38 le, renewable energy resources for the purpose of meeting the state's 50  
39 by 30 target. In developing such program, the public service commission  
40 shall create an obligation on load serving entities to purchase tier 2  
41 renewable energy credits from eligible large-scale, renewable energy  
42 resources through a process and requirements as fully described below:

43 1. Annual targets for tier 2 renewable energy credits. The public  
44 service commission shall provide annual targets and mandates for the  
45 acquisition of tier 2 renewable energy credits by load serving entities  
46 for the years 2017 to 2030 that ensures market demand for tier 2 renewa-  
47 ble energy credits for all resources that become eligible large-scale,  
48 renewable energy resources during such timeframe for purposes of achiev-  
49 ing the 50 by 30 target. The targets to be established by the public  
50 service commission should reflect the quantity of renewable energy  
51 generation that is serving total electric load in New York state,  
52 excluding generation from facilities owned by the power authority of the  
53 state of New York and excluding hydropower from generators with a capac-  
54 ity greater than 50 megawatts.

55 2. Load serving entities' tier 2 renewable energy credit obligation.  
56 Each load serving entity shall be responsible for acquiring a defined

1 quantity of tier 2 renewable energy credits based upon the total tier 2  
2 load serving entity obligation target allocated to all load serving  
3 entities proportional to the load each serves; i.e., determined by  
4 multiplying each load serving entity's actual load for the prior year by  
5 the percentage GWh target for that year. The New York state energy  
6 research and development authority shall publish each load serving enti-  
7 ty's annual obligation for each annual compliance period on its website  
8 or by other appropriate means by December 1 of the year prior to the  
9 year such published annual obligation shall apply.

10 3. Tier 2 renewable energy credit price. By each December 1 prior to  
11 the annual compliance period, the public service commission shall estab-  
12 lish a tier 2 renewable energy credit price to be set at 75 percent of  
13 the weighted average cost per renewable energy credit that the New York  
14 state energy research and development authority paid to acquire renewa-  
15 ble energy credits from resources under the clean energy standard tier 1  
16 program in the prior calendar year.

17 4. Financial hardship. Those eligible large-scale, renewable energy  
18 resources for which the tier 2 renewable energy credit price is insuffi-  
19 cient may seek additional financial assistance from the New York state  
20 energy research and development authority through contracts having a  
21 minimum duration of ten years for the purpose of ensuring the continued  
22 viability and availability of such resources toward meeting the 30 by 50  
23 target. The New York state energy research and development authority  
24 shall apply the following criteria in determining the eligibility of  
25 such eligible large-scale, renewable energy resources to receive such  
26 financial assistance, which shall be paid as an increment above the tier  
27 2 renewable energy credit price determined pursuant to subdivision three  
28 of this section:

29 (a) A showing of financial hardship;

30 (b) The basis for and reasonableness of expected operating and capital  
31 costs. This evaluation may include, among other things, a comparison to  
32 prior years' costs and a comparison to costs of like generation;

33 (c) The existence of any other cash sources available to the large-  
34 scale, renewable energy resource, such as: (i) tax benefits; (ii) subsi-  
35 dies; (iii) contracts; and (iv) other sources, including restructuring  
36 financing;

37 (d) Whether market rules are increasing the costs of the large-scale,  
38 renewable energy resource and, if so, whether any steps can be taken to  
39 reduce such costs;

40 (e) Whether the large-scale, renewable energy resource's real property  
41 tax assessment is consistent with the assessments imposed in similarly  
42 situated facilities elsewhere, and if not, what action has been taken to  
43 address such assessment;

44 (f) Whether the large-scale, renewable energy resource is required to  
45 operate as part of a package of assets that is financially viable as a  
46 whole;

47 (g) Whether the large-scale, renewable energy resource generates  
48 enough revenue, based on expected output, to cover its operating costs  
49 and enjoy a reasonable return;

50 (h) Whether the generation facility generates enough revenue to make  
51 necessary capital improvements;

52 (i) Whether the large-scale, renewable energy resource generates  
53 enough revenue to cover its fixed costs, including: (i) debt service;  
54 (ii) property taxes; (iii) security costs; and (iv) other costs;

1 (j) Whether the large-scale, renewable energy resource has attempted  
2 to make use of other renewables programs available to it, such as volun-  
3 tary green markets; and

4 (k) The regional economic importance of the resource. This evaluation  
5 may include job creation and retention, regional spending for fuel and  
6 other goods and services, contribution to local tax base, fuel diversi-  
7 ty, greenhouse gas reduction, enhanced forest health, flood control,  
8 municipal water supply, ecological stewardship and other non-economic  
9 factors on a region-specific basis. Any contract entered into with an  
10 eligible large-scale, renewable energy resource pursuant to this subdivi-  
11 sion shall include a reasonable return, and take the form of a fixed  
12 price increment to the tier 2 renewable energy credit price that the  
13 generator is receiving from a load serving entity or a financial  
14 contract for differences to adjust based on fluctuations in the tier 2  
15 renewable energy credit price. The totality of all increments provided  
16 to resources pursuant to this subdivision shall be recovered from deliv-  
17 ery customers in the same manner as in the renewable portfolio standard  
18 program maintenance tier.

19 5. Procedures. To implement the tier 2 renewable energy credit  
20 program, the public service commission shall also adopt within 120 days  
21 of the effective date of this act the following procedures and related  
22 requirements:

23 (a) The public service commission shall establish procedures consist-  
24 ent with the procedures developed under the clean energy standard tier 1  
25 program to determine the eligibility of large-scale, renewable energy  
26 resources to participate in the program adopted pursuant to this act and  
27 to certify such eligible large-scale, renewable energy resources. All  
28 resources that have previously been found by the New York state energy  
29 research and development authority to meet the eligibility and delivera-  
30 bility requirements in force under the renewable portfolio standard or  
31 clean energy standard programs shall be deemed to meet eligibility and  
32 deliverability requirements of this act.

33 (b) The public service commission, with the assistance of the New York  
34 state energy research and development authority, shall develop an equi-  
35 table process by which load serving entities acquire tier 2 renewable  
36 energy credits from eligible large-scale, renewable energy resources,  
37 which may include the designation of the New York state energy research  
38 and development authority as the central procurement entity for tier 2  
39 renewable energy credits, whereby the New York state energy research and  
40 development authority would ensure the registration of all tier 2 renew-  
41 able energy resources from generators in New York generation attribute  
42 tracking systems, purchase the required targeted amount of tier 2 renew-  
43 able energy credits, and re-sell the tier 2 renewable energy credits to  
44 load serving entities on an annual basis in order to facilitate their  
45 collective efficient compliance. The public service commission, with the  
46 assistance of the New York state energy research and development author-  
47 ity, shall also develop and implement protocols in the event that there  
48 is an oversupply or undersupply of tier 2 renewable energy credits  
49 offered for sale, relative to the tier 2 renewable energy credit obli-  
50 gation applied to the load serving entities, provided that the protocols  
51 should recognize and prioritize the realization of economic benefits in  
52 New York from generators located in New York.

53 (c) The public service commission shall develop procedures by which  
54 eligible large-scale, renewable energy resources may obtain contracts  
55 from the New York state energy research and development authority under  
56 subdivision four of this section in accordance with the requirements of

1 the state administrative procedure act. Such procedures shall, on a  
2 case-by-case basis, authorize eligible large-scale, renewable energy  
3 resources to petition the public service commission for a finding of  
4 financial hardship, which finding shall be based upon a determination  
5 that the established tier 2 renewable energy credits determined in  
6 accordance with subdivision three of this section are insufficient to  
7 ensure the viability of the resource. The public service commission  
8 shall make a final decision with respect to such contract within 120  
9 days after a hardship petition is received.

10 (d) Each load serving entity shall demonstrate compliance with the  
11 requirements of this section through an annual compliance filing pursu-  
12 ant to a process established by the public service commission that is  
13 consistent with the compliance filing requirements established pursuant  
14 to the tier 1 program.

15 § 5. This act shall take effect immediately.