

STATE OF NEW YORK

7275

2017-2018 Regular Sessions

IN ASSEMBLY

April 17, 2017

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

AN ACT in relation to maintaining the continued viability of the state's existing large-scale renewable energy resources through the implementation of a tier 2 renewable energy credit

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

1 Section 1. Legislative findings and declaration. The legislature hereby finds and declares that:

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

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

16 3. A recent study shows that New York's clean energy sector now
17 employs more than 85,000 workers at more than 7,500 business establishments
18 spread out across the state, in both the renewable energy and
19 energy efficiency sectors. With implementation of the clean energy standard,
20 clean energy jobs are anticipated to grow by more than 6 percent
21 per year or double the growth rate of the entire United States economy
22 in 2016. Proper implementation of the clean energy standard will ensure
23 that the state meets these job growth projections.
24

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 ensure 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 goal 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 goal.

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 goal, and may compete 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 clean energy standard order as defined in subdivision 3 of this section, and in the case of hydropower, has a generating capacity fewer 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 3 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 servicing entity; and

(c) is otherwise found by New York state energy research and development authority to meet deliverability requirements specified in section

1 3 of this act, and other eligibility requirements specified in subdivi-
2 sion 1 of this section.

3 3. "Clean energy standard order" means the order adopting a clean
4 energy standard dated August 1, 2016, and entered in case no. 15-E-0302
5 et seq.

6 4. "Load serving entities" means and includes all investor-owned
7 distribution utilities in their capacity as commodity suppliers, energy
8 service companies or community choice aggregation programs not served by
9 energy service companies, municipal utilities under the jurisdiction of
10 the public service commission, and retail customers that self-supply
11 with electricity through the New York independent system operator.

12 5. "Renewable energy credit" means a tradable, non-tangible energy
13 commodity that represents proof that one megawatt-hour of electricity
14 was generated from a renewable energy resource. To be eligible for sale
15 in New York state and to meet the procurement obligations of load serv-
16 ing entities, each renewable energy credit must be registered with the
17 New York generation attribute tracking system.

18 6. "Tier 1" means the program designated as tier 1 pursuant to the
19 clean energy standard order.

20 7. "Tier 2 renewable energy credit" refers to a renewable energy cred-
21 it generated by an eligible large-scale renewable energy resource pursu-
22 ant to this act.

23 § 3. Deliverability. Energy from an eligible large-scale renewable
24 energy resource shall be deemed to comply with the New York deliverabil-
25 ity requirement if it is:

26 1. delivered into a market administered by the New York independent
27 system operator for end-use in New York state;

28 2. delivered through a wholesale meter under the control of a utility,
29 public authority or municipal electric company such that it can be meas-
30 ured, and such that consumption within New York state can be tracked and
31 verified by such entity or by the New York independent system operator;
32 or

33 3. delivered through a renewable energy resource dedicated generation
34 meter, approved by and subject to independent verification by the New
35 York state energy research and development authority, to a customer in
36 New York state.

37 § 4. Program for eligible large-scale renewable energy resources.

38 1. Notwithstanding any other provision of law to the contrary, includ-
39 ing but not limited to, any order, rule or regulation promulgated pursu-
40 ant to the public service law, the public authorities law, and/or the
41 state administrative procedure act, the public service commission, in
42 consultation with the New York state energy research and development
43 authority, shall adopt a program within 120 days of the effective date
44 of this act, to provide support to eligible large-scale renewable energy
45 resources through a market for tier 2 renewable energy credits as
46 defined in subdivision 5 of section 2 of this act to ensure the contin-
47 ued viability of eligible large-scale renewable energy resources for the
48 purpose of meeting the state's 50 by 30 goal. In developing such
49 program, the public service commission shall create an obligation on
50 load servicing entities to purchase tier 2 renewable energy credits from
51 eligible large-scale renewable energy resources through the process
52 described in subdivision 2 of this section:

53 2. Tier 2 renewable energy credits. (a) Annual targets. The public
54 service commission shall provide annual targets and mandates for the
55 acquisition of tier 2 renewable energy credits by load servicing enti-
56 ties for the years 2017 to 2030 that ensure market demand for tier 2

1 renewable energy credits for all resources that become eligible large-
2 scale renewable energy resources during that timeframe for purposes of
3 achieving the 50 by 30 goal. The targets to be established by the public
4 service commission should reflect the quantity of renewable energy
5 generation that is serving total electric load in New York state,
6 excluding generation from facilities owned by the New York state power
7 and excluding hydropower from generators with a capacity greater than 50
8 megawatts.

9 (b) Credit obligations of load serving entities. Each load serving
10 entity shall be responsible for acquiring a defined quantity of tier 2
11 renewable energy credits based upon the total tier 2 load serving entity
12 obligation target allocated to all load serving entities proportional to
13 the load each serves; i.e., determined by multiplying each load serving
14 entity's actual load for the prior year by the percentage gigawatt hour
15 target for that year. The New York state energy research and development
16 authority shall publish each load serving entity's annual obligation for
17 each annual compliance period on its website or by other appropriate
18 means by December first of each year.

19 (c) Price. Every December first preceding the annual compliance peri-
20 od, the public service commission shall establish a tier 2 renewable
21 energy credit price to be set at 75 percent of the weighted average cost
22 per renewable energy credits that the New York state energy research and
23 development authority paid to acquire renewable energy credits from
24 resources under the clean energy standard tier 1 program in the preced-
25 ing calendar year.

26 (d) Financial hardship. Those eligible large-scale renewable energy
27 resources for which the tier 2 renewable energy credit price is insuffi-
28 cient may seek additional financial assistance from the New York state
29 energy research and development authority through contracts having a
30 minimum duration of ten years for the purpose of ensuring the continued
31 viability and availability of such resources toward meeting the 50 by 30
32 goal. The New York state energy research and development authority shall
33 apply the following criteria in determining the eligibility of such
34 eligible large-scale renewable energy resources to receive such finan-
35 cial assistance, which shall be paid as an increment above the tier 2
36 renewable energy credit price increment determined pursuant to subdivi-
37 sion (c) of this section.

38 i. A showing of financial hardship.

39 ii. The basis for and reasonableness of expected operating and capital
40 costs. This evaluation may include, among other things, a comparison to
41 prior year's costs and a comparison to costs of like generation.

42 iii. The existence of any other cash sources available to the large-
43 scale renewable energy resource, such as: (A) tax benefits, (B) subsi-
44 dies, (C) contracts, and (D) other sources, including restructuring
45 financing.

46 iv. Whether market rules are increasing the costs of the large-scale
47 renewable energy resource and, if so, whether any steps can be taken to
48 reduce such costs.

49 v. Whether the large-scale renewable energy resource's real property
50 tax assessment is consistent with the assessments imposed in similarly
51 situated facilities elsewhere, and if not, what action has been taken to
52 address such assessment.

53 vi. Whether the large-scale renewable energy resource is required to
54 operate as part of a package of assets that is financially viable as a
55 whole.

vii. Whether the large-scale renewable energy resource generates enough revenue, based on expected output, to cover its operating costs and enjoy a reasonable return.

viii. Whether the generation facility generates enough revenue to make necessary capital improvements.

ix. Whether the large-scale renewable energy resource generates enough revenue to cover its fixed costs, including: (A) debt service, (B) property taxes, (C) security costs, and (D) other costs.

x. Whether the large-scale renewable energy resource has attempted to make use of other renewable programs available to it, such as voluntary green markets.

xi. And, the regional economic importance of the resource. This evaluation may include job creation and retention, regional spending for fuel and other goods and services, contribution to local tax base, fuel diversity, greenhouse gas reduction, enhanced forest health, flood control, municipal water supply, ecological stewardship and other non-economic factors on a region-specific basis.

Any contract entered into with an eligible large-scale renewable energy resource pursuant to this subdivision shall include a reasonable return, and take the form of a fixed price increment to the tier 2 renewable energy credit price that the generator is receiving from a load serving entity or a financial contract for differences to adjust based on fluctuations in the tier 2 renewable energy credit price. The totality of all increments provided to resources pursuant to this subdivision shall be recovered from delivery customers in the same manner as in the RPS program maintenance tier.

(e) Procedures. To implement the tier 2 renewable energy credit program, the public service commission shall also adopt, within 120 days of the effective date of this act, the following procedures and related requirements.

i. The public service commission shall establish procedures consistent with the procedures developed under the clean energy standard tier 1 program to determine the eligibility of large-scale renewable energy resources to participate in the program adopted pursuant to this act, and to certify those eligible large-scale renewable energy resources. All resources that have previously been found by the New York state energy research and development authority to meet the eligibility and deliverability requirements in force under the clean energy standard programs shall be deemed to meet eligibility and deliverability requirements of this act.

ii. The public service commission, with the assistance of the New York state energy research and development authority, shall develop an equitable process by which load serving entities acquire tier 2 renewable energy credits from eligible large-scale renewable energy resources, which may include the designation of the New York state energy research and development authority as the central procurement entity for tier 2 renewable energy credits, whereby the New York state energy research and development authority would ensure the registration of all tier 2 renewable energy credits from generators in the New York generation attribute tracking system, purchase the required targeted amount of tier 2 renewable energy credits, and re-sell the tier 2 renewable energy credits to load serving entities on an annual basis in order to facilitate their collective efficient compliance. The public service commission, with the assistance of the New York state energy research and development authority, shall also develop and implement protocols in the event that there is an oversupply or undersupply of tier 2 renewable energy credits

1 offered for sale, relative to the tier 2 renewable energy credit obli-
2 gation applied to the load serving entities, provided that the protocols
3 should recognize and prioritize the realization of economic benefits in
4 New York from generators located in New York.

5 iii. The public service commission shall develop procedures by which
6 eligible large-scale renewable energy resources may obtain contracts
7 from the New York state energy research and development authority pursu-
8 ant to subdivision (d) of this section in accordance with the require-
9 ments of the state administrative procedure act. Such procedures shall,
10 on a case-by-case basis, authorize eligible large-scale renewable energy
11 resources to petition the public service commission for a finding of
12 financial hardship, which finding shall be based upon a determination
13 that the established tier 2 renewable energy credits determined in
14 accordance with subdivision (c) of this section is insufficient to
15 ensure the viability of the resource. The public service commission
16 shall make a final decision with respect to such contract within 120
17 days after a hardship petition is received.

18 iv. Each load serving entity shall demonstrate compliance with the
19 requirements of this section through an annual compliance filing pursu-
20 ant to a process established by the public service commission that is
21 consistent with the compliance filing requirements established pursuant
22 to the tier 1 program.

23 § 5. This act shall take effect immediately.