

# 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 here-  
2 by finds and declares that:  
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 such as: solar; wind; hydroelectric; biomass; fuel cells and similar  
12 resources. To further promote and incentivize the development of renewa-  
13 ble energy, the New York state public service commission recently estab-  
14 lished a clean energy standard requiring, among other things, that fifty  
15 percent of the electric load in the state be served entirely by renewa-  
16 ble resources by the year 2030, hereinafter the 50 by 30 goal.  
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 6 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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1 4. To promote achievement of the clean energy standard, and to ensure  
2 the continued job growth and other benefits attendant to a clean energy  
3 economy, New York needs to ensure that its existing large-scale renewa-  
4 ble energy sector is provided with adequate price signals and financial  
5 incentives to remain in operation and to sell their renewable energy  
6 attributes in New York, allowing the state to count the resources toward  
7 the 50 by 30 goal and retain the jobs and tax payments supported by  
8 these generators. Absent these assurances, it would be difficult if not  
9 impossible for the state to meet the recently established goal.

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

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

28 7. Accordingly, the overlying intent of this act is to provide exist-  
29 ing large-scale renewable energy resources in New York state with appro-  
30 priate financial incentives to continue operations for the foreseeable  
31 future.

32 § 2. Definitions.

33 1. "Large-scale renewable energy resource" means an electric generat-  
34 ing facility that:

35 (a) sells its energy in the wholesale markets operated by the New York  
36 independent system operator;

37 (b) is deemed an eligible technology type pursuant to appendix A of  
38 the clean energy standard order as defined in subdivision 3 of this  
39 section, and in the case of hydropower, has a generating capacity fewer  
40 than 50 megawatts;

41 (c) is physically located within the jurisdiction of the New York  
42 independent system operator; and

43 (d) the associated energy is delivered in accordance with a New York  
44 delivery requirement as described in section 3 of this act.

45 2. "Eligible large-scale renewable energy resource" means an existing  
46 large-scale renewable energy resource that:

47 (a) at the time in question is not under a contract for the sale of  
48 renewable energy credits with the New York state energy research and  
49 development authority pursuant to the renewable portfolio standard main  
50 tier or maintenance tier program or clean energy standard tier 1 program  
51 implemented by such authority;

52 (b) is not under an existing contract for sale of renewable energy  
53 credits with a load servicing entity; and

54 (c) is otherwise found by New York state energy research and develop-  
55 ment 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.

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

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

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

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

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

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

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

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

41 ii. The public service commission, with the assistance of the New York  
42 state energy research and development authority, shall develop an equi-  
43 table process by which load serving entities acquire tier 2 renewable  
44 energy credits from eligible large-scale renewable energy resources,  
45 which may include the designation of the New York state energy research  
46 and development authority as the central procurement entity for tier 2  
47 renewable energy credits, whereby the New York state energy research and  
48 development authority would ensure the registration of all tier 2 renew-  
49 able energy credits from generators in the New York generation attribute  
50 tracking system, purchase the required targeted amount of tier 2 renewa-  
51 ble energy credits, and re-sell the tier 2 renewable energy credits to  
52 load serving entities on an annual basis in order to facilitate their  
53 collective efficient compliance. The public service commission, with the  
54 assistance of the New York state energy research and development author-  
55 ity, shall also develop and implement protocols in the event that there  
56 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.