

STATE OF NEW YORK

5549

2017-2018 Regular Sessions

IN SENATE

April 10, 2017

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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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 assure 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 target 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 target.

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 target, and compete effectively with other renewable classes in the
20 clean energy 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 security,
23 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
30 appropriate financial incentives to continue operations for the foresee-
31 able future.

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

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

52 3. "Load serving entity" or "load serving entities" means and includes
53 all investor-owned distribution utilities (in their capacity as commod-
54 ity suppliers), energy service companies, community choice aggregation
55 programs not served by energy service companies, municipal utilities
56 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.