

# STATE OF NEW YORK

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4294

2019-2020 Regular Sessions

## IN ASSEMBLY

February 4, 2019

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Introduced by M. of A. CUSICK -- 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

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 within the  
34 New York control area with a generating capacity of 25 kilowatts or  
35 more; (b) is deemed an eligible technology type pursuant to Appendix A  
36 of the "Order Adopting a Clean Energy Standard" and, in the case of  
37 hydropower, has a generating capacity less than 50 megawatts; (c) is  
38 physically located within the jurisdiction of the New York independent  
39 system operator; and (d) the associated energy is delivered in accord-  
40 ance with a New York delivery requirement as described in section three  
41 of this act.

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

54 3. "Qualified independent party" shall have the meaning given to the  
55 term in the New York Generation Attribute Tracking System (NYGATS) oper-

1 ating rules promulgated by the New York state energy research and devel-  
2 opment authority.

3 4. "Load serving entity" or "load serving entities" means and includes  
4 all investor-owned distribution utilities (in their capacity as commod-  
5 ity suppliers), energy service companies, community choice aggregation  
6 programs not served by energy service companies, municipal utilities  
7 under the jurisdiction of the public service commission, and retail  
8 customers that self-supply with electricity through the New York inde-  
9 pendent system operator.

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

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

18 7. "Tier 2 renewable energy credit" refers to a renewable energy cred-  
19 it generated by an eligible large-scale, renewable energy resource.

20 8. "Order adopting a clean energy standard" means the public service  
21 commission order dated August 1, 2016, and entered in case number 15-E-  
22 0302 et seq.

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 either it is: (a) delivered into a market adminis-  
26 tered by the New York independent system operator for end-use in New  
27 York state; (b) delivered through a wholesale meter under the control of  
28 a utility, public authority or municipal electric company such that it  
29 can be measured, and such that consumption within New York state can be  
30 tracked and verified by such entity or by the New York independent  
31 system operator; or (c) delivered to a customer in New York state, where  
32 such delivery shall be subject to independent verification by the New  
33 York state energy research and development authority or a qualified  
34 independent party.

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

50 1. Annual targets for tier 2 renewable energy credits. The public  
51 service commission shall provide annual targets and mandates for the  
52 acquisition of tier 2 renewable energy credits by load serving entities  
53 for the years 2019 to 2030 that ensures market demand for tier 2 renewa-  
54 ble energy credits for all resources that become eligible large-scale,  
55 renewable energy resources during such timeframe for purposes of achiev-  
56 ing the 50 by 30 target. The targets to be established by the public

1 service commission should reflect the quantity of renewable energy  
2 generation that is serving total electric load in New York state,  
3 excluding generation from facilities owned by the power authority of the  
4 state of New York and excluding hydropower from generators with a capac-  
5 ity greater than 50 megawatts.

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

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

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

36 (a) A showing of financial hardship;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 should recognize and prioritize the realization of economic benefits in  
2 New York from generators located in New York.

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

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

21 § 5. This act shall take effect immediately.