STATE OF NEW YORK

4294

2019-2020 Regular Sessions

IN ASSEMBLY

February 4, 2019

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:

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

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

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

3. A recent study shows that New York's clean energy sector now employs more than 85,000 workers at more than 7,500 business establishments spread out across the state, in both the renewable energy and energy efficiency sectors. With implementation of the clean energy standard, clean energy jobs are anticipated to grow by more than six percent per year or double the growth rate of the entire United States economy in 2016. Proper implementation of the clean energy standard will ensure 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 within the New York control area with a generating capacity of 25 kilowatts or more; (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, maintenance tier or customsited 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. "Qualified independent party" shall have the meaning given to the term in the New York Generation Attribute Tracking System (NYGATS) oper-

ating rules promulgated by the New York state energy research and development authority.

4. "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 customers that self-supply with electricity through the New York independent system operator.

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

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

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

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

§ 3. Deliverability. Energy from an eligible large-scale, renewable energy resource shall be deemed to comply with the New York deliverability requirement if either it is: (a) delivered into a market administered by the New York independent system operator for end-use in New York state; (b) delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York state can be tracked and verified by such entity or by the New York independent system operator; or (c) delivered to a customer in New York state, where such delivery shall be subject to independent verification by the New York state energy research and development authority or a qualified independent party.

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

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

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

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

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

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

(a) A showing of financial hardship;

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

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

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

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

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

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

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

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

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

(k) 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 renewable portfolio standard program maintenance tier.

5. 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:

(a) 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 such 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 renewable portfolio standard or clean energy standard programs shall be deemed to meet eligibility and deliverability requirements of this act.

(b) 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 resources from generators in New York generation attribute tracking systems, 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 offered for sale, relative to the tier 2 renewable energy credit obligation applied to the load serving entities, provided that the protocols

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

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

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

§ 5. This act shall take effect immediately.