

STATE OF NEW YORK

8096

2021-2022 Regular Sessions

IN ASSEMBLY

June 11, 2021

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. To further promote and incentivize the development of renewable
10 energy, New York state recently adopted the Climate Leadership and
11 Community Protection Act (CLCPA), which, among other things, mandates
12 that by 2030, 70% of electricity consumed in the state will come from
13 renewable resources, and 100% of such electricity be renewable by 2040
14 (CLCPA targets). In 2019, approximately 27 percent of the state's elec-
15 tric load (representing 41,340 gigawatt hours) was supplied by renewable
16 resources - solar, wind, hydroelectric, biomass, fuel cells and similar
17 resources.

18 3. However, a recently published triennial review of the clean energy
19 standard (CES) found that falling commodity market revenues in the
20 wholesale energy markets create a risk that legacy renewable generators
21 may not be able to cover their costs. These facilities have options to
22 export to neighboring renewable portfolio standard (RPS) compliance
23 markets and will do so if the renewable energy certificate (REC) revenue
24 opportunity is greater than New York's voluntary market.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 4. Exports of legacy supply have increased since 2014 by about 0.5
2 TWh, and unless reversed would need to be made up from incremental
3 sources of supply in order to achieve CLCPA targets. There is a real and
4 present danger that a significant portion of New York's resources will
5 either cease operations or sell increasing volumes of their RECs to
6 neighboring markets. In either case, New York will not be able to count
7 them towards the CLCPA targets.

8 5. A recent study shows that, in the wake of COVID-19, after reaching
9 nearly 164,000 clean energy jobs statewide in 2019, the pandemic tempo-
10 rarily reversed multi-year growth trends. The clean energy industry can
11 serve as a cornerstone for economic recovery, but that must begin with
12 the retention of New York's existing valuable renewable assets.

13 6. The CES was established in a 2016 public service commission order,
14 predating the CLCPA. In its original form, the CES was composed of a
15 tier 1 for the development of new large-scale renewables, a maintenance
16 tier 2 to provide short-term relief to economically distressed renewable
17 resources, and a tier 3 to support the state's nuclear resources through
18 ZECs. In 2018, the public service commission added a program related to
19 offshore wind development. Despite numerous appeals from the renewable
20 energy and environmental advocates, none of the public service commis-
21 sion's actions modified the program such that the state's existing
22 renewable energy resources would be preserved as a baseline onto which
23 to add in pursuit of the state's laudable and aggressive environmental
24 goals.

25 7. In 2019, the CLCPA was passed and signed into law. In the meantime,
26 during the period between the implementation of the CES to the CLCPA
27 becoming law (2016-2019), exports of baseline renewable generation
28 increased by approximately 50 percent - a direct contrast to the objec-
29 tives of both initiatives. Given that numerous RPS contracts will be
30 expiring in the near term, the public service commission has stated that
31 it expects this trend to continue, potentially putting New York at risk
32 of not reaching the 70 by 30 target.

33 8. Also, in 2019, a separate energy-related bill passed both houses of
34 the legislature. That bill would have created a truly supportive tier 2
35 requiring the New York state energy research and development authority
36 (NYSERDA) to procure RECs from all eligible existing renewable resources
37 at a discounted rate (75%) of the current tier 1 REC price. That
38 proposed legislation rightfully recognized that to promote achievement
39 of the CLCPA targets, and to ensure the continued job growth and other
40 benefits attendant to a clean energy economy, New York needs to assure
41 that its existing renewable resources are provided with adequate price
42 signals and financial incentives to remain in operation and to sell
43 their renewable energy attributes in New York. Absent these assurances,
44 it would be difficult if not impossible for the state to meet the
45 recently established targets.

46 9. The governor vetoed the tier 2 legislation, citing in large part
47 that payments would be made to renewable resources on a non-competitive
48 basis. However, he ordered NYSERDA and the department of public service
49 to develop a program "to provide qualified legacy renewable energy
50 resources in New York State with appropriate support to continue to
51 competitively operate and contribute to the State's clean energy goals."

52 10. In response to the veto message, NYSERDA filed a petition with a
53 proposed framework for a competitive tier 2, which the public service
54 commission adopted in an October 2020 order modifying the clean energy
55 standard. The program would issue annual solicitations over three years,
56 with the winning bidders receiving three-year contracts to sell their

1 RECs to NYSERDA at the accepted price. NYSERDA's stated goal was to
2 procure approximately one-third of the renewable baseline RECs in each
3 auction.

4 11. However, the first ever competitive tier 2 solicitation, completed
5 in May 2021, netted awards to just three renewable facilities that total
6 less than 14 MW, while the eligible baseline capacity well exceeds 1,000
7 MW. The low volume of awards is directly attributable to offers being
8 rejected due to a confidential price cap utilized by NYSERDA, which does
9 not accurately reflect the price needed to keep New York's renewable
10 resources in New York.

11 12. Even had NYSERDA accurately valued existing renewables, the
12 competitive tier 2 program is set to have the contracts from its third
13 and final solicitation expire at the conclusion of 2025, a full four
14 years before the first CLCPA renewable target date of 2030. This chasm
15 provides no assurances to renewable resources that they should invest in
16 their assets or keep their RECs in the state in the critical years lead-
17 ing up to the 70 by 30 target.

18 13. New York's ability to meet the CLCPA targets will be hampered if
19 such existing resources provide their wholesale energy products for
20 delivery to adjacent states, some of which have enacted laws that
21 provide for a robust market that provides a stronger opportunity to sell
22 renewable energy attributes than is currently available in New York.

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

30 15. Accordingly, the overlying intent of this act is to modify the
31 competitive tier 2 program such that it appropriately values maintaining
32 the state's renewable baseline and provides existing large-scale, renew-
33 able energy resources in New York state with appropriate financial
34 incentives to continue operations for the foreseeable future.

35 § 2. Definitions. As used in this act:

36 1. "Competitive tier 2 program" refers to the renewable baseline
37 retention program created within the order modifying the clean energy
38 standard and being administered by NYSERDA.

39 2. "Eligible competitive tier 2 resource" shall have the same meaning
40 as contained in the order adopting modifications to the clean energy
41 standard: (a) existing non-state-owned run-of-river hydropower and
42 existing wind generators located within the State; (b) that have entered
43 commercial operation prior to January 1, 2015, and (c) are not already
44 under contract with NYSERDA.

45 3. "Renewable energy credit" means a tradable, non-tangible energy
46 commodity that represents proof that 1 megawatt-hour (MWh) of electric-
47 ity was generated from a renewable energy resource.

48 4. "Tier 1" means the program designated as tier 1 pursuant to the
49 order adopting a clean energy standard and subsequently refined within
50 the order modifying the clean energy standard.

51 5. "Tier 2 renewable energy credit" refers to a renewable energy cred-
52 it generated by an eligible competitive tier 2 resource.

53 6. "Maximum bid price" shall mean the price employed by NYSERDA above
54 which offers submitted in the competitive tier 2 program would be
55 rejected.

1 7. "Order adopting a clean energy standard" means the public service
2 commission order dated August 1, 2016 and entered in case number
3 15-E-2203 et seq.

4 8. "Order modifying the clean energy standard" means the public
5 service commission order dated October 15, 2020, and entered in case
6 number 15-E-2203 et seq.

7 § 3. Modifications to the competitive tier 2 program. 1. The public
8 service commission, in consultation with the New York state energy
9 research and development authority, shall modify the following
10 provisions of the competitive tier 2 program within 30 days of the
11 effective date of this act, to provide support to and for eligible
12 competitive tier 2 resources.

13 2. Maximum bid price. The maximum bid price utilized by NYSERDA for
14 each solicitation conducted within the competitive tier 2 program shall
15 be set equal to 75% of NYSERDA's tier 1 REC sale price established for
16 the most recently completed Renewable Energy Standard (RES) compliance
17 year for tier 1 RECs.

18 3. Program cost cap. The \$200 million cost cap on total program
19 expenditures imposed by the order modifying the clean energy standard is
20 eliminated. Program costs will be determined by the volume of accepted
21 offers, as determined by NYSERDA's annual targets, multiplied by the
22 price of accepted offers no greater than the maximum bid price.

23 4. Program duration. The competitive tier 2 program shall remain in
24 place and NYSERDA shall conduct annual solicitations for tier 2 RECs
25 such that the final solicitation will result in NYSERDA procuring tier 2
26 RECs under awarded contracts through the year 2030.

27 5. Annual targets for tier 2 renewable energy credits. The target
28 volume of tier 2 RECs in each of NYSERDA's annual tier 2 solicitation
29 shall be one-half the quantity of renewable energy generation that is
30 serving total electric load in New York state, excluding generation from
31 facilities owned by the power authority of the state of New York or
32 otherwise under contract with NYSERDA.

33 § 4. This act shall take effect immediately.