STATE OF NEW YORK

4378--A

Cal. No. 341

2021-2022 Regular Sessions

IN SENATE

February 4, 2021

Introduced by Sens. BRISPORT, HINCHEY, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the environmental conservation law, in relation to establishing the "pollution justice act of 2021" and implementing a plan to replace peaker plants with renewable energy systems

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "pollution justice act of 2021".

§ 2. Article 19 of the environmental conservation law is amended by adding a new title 13 to read as follows:

TITLE 13

PEAKER PLANTS

Section 19-1301. Statement of findings.
19-1303. Definitions.
19-1305. Mandatory replacement and compliance plan.
19-1307. Extensions for cause.
19-1309. Prohibitions.
19-1311. Exemptions.

§ 19-1301. Statement of findings.

1. Electric generating units that generally operate during periods of peak electricity demand are known as peaker plants. Many peaker plants in the state are older fossil fuel-fired units that emit greenhouse gases and a variety of other harmful air pollutants including sulfur oxides, nitrogen oxides, particulates and mercury.

2. A substantial number of peaker plants are located in or adjacent to environmental justice communities in the city of New York and Long Island that already bear disproportionate pollution burdens due to a

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

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history of siting pollution sources in those communities. More than one million New Yorkers live within one mile of a peaker plant.

3. Pollutants from peaker plants contribute to significant public health problems. According to the New York city department of health and mental hygiene's air pollution and the health of New Yorkers report: "each year, PM2.5 pollution in (New York City) causes more than 3,000 deaths, 2,000 hospital admissions for lung and heart conditions, and approximately 6,000 emergency department visits for asthma in children and adults." According to the report, each year exposures to ozone concentrations above background levels cause an estimated "400 premature deaths, 850 hospitalizations for asthma and 4,500 emergency department visits for asthma."

4. Peaker plants often operate during summer months when air pollution levels are highest and their emissions add to existing pollution burdens in environmental justice communities and contribute to adverse health effects in those communities from air pollution.

5. The owners and operators of peaker plants have received billions of dollars in capacity payments from ratepayers over the last decade to subsidize operation of their plants, even though the plants primarily operate during peak load periods.

6. Fossil fuel-burning peaker plants can be replaced with renewable energy systems that will eliminate or significantly reduce air pollution impacts to environmental justice communities from peaker plant operations.

7. Replacement of fossil fuel-burning peaker plants with renewable energy systems is in the public interest, will save millions of dollars in environmental and human health-related damages, will promote environmental justice and will assist in meeting the greenhouse gas emission reduction and energy storage goals of the climate leadership and community protection act.

§ 19-1303. Definitions.

1. "Adjacent to" shall mean within a radius of one mile from the plant property boundary.

2. "Economically distressed area" shall mean an area characterized by a poverty rate of at least twenty percent or an unemployment rate of at least one hundred twenty-five percent of the statewide unemployment rate.

3. "Environmental justice community" means an economically distressed area or minority community and includes, but is not limited to, environmental justice areas identified by the department.

4. "Ethnic group" shall mean those groups identified in the definition of minority group member in subdivision eight of section three hundred ten of the executive law.

5. "Minority community" shall mean any census tract, census block or census block group that includes twenty-five percent or more of any ethnic group.

6. "Operating permit" shall have the meaning set forth in subdivision eighteen of section 19-0107 of this article.

7. "Renewable energy systems" shall have the meaning set forth in section sixty-six-p of the public service law and may also include firm zero emission resources such as long-duration energy storage.

8. "Replace" or "replacement" means the construction and operation of a renewable energy system, battery or energy storage, or transmission and distribution infrastructure that enables the provision of the equivalent maximum annual power output achieved by the replaceable peaker

plant during any single year during the ten years preceding the submission of an application to renew an operating permit.

9. "Replaceable peaker plant" means a major electric generating facility as defined in paragraph b of subdivision one of section 19-0312 of this article that burns coal, oil, diesel or natural gas and was operational and generated electricity less than fifteen percent of the year during at least two years between two thousand ten through two thousand nineteen and that is located in or adjacent to an environmental justice community.

§ 19-1305. Mandatory replacement and compliance plan.

1. The owner or operator of a replaceable peaker plant shall submit to the department as part of an application to renew an operating permit a mandatory replacement and compliance plan that shall include, at a minimum, the following:

a. The number of days and hours such plant operated during each of the previous ten years;

b. The annual power output of such plant for each of the previous ten years;

c. The fuel or fuels utilized by such plant to generate power;

d. A proposed strategy to replace the plant with renewable energy systems or battery storage or a combination thereof. The strategy shall, at a minimum, set forth the type or types of renewable energy systems and battery storage to be utilized, the proposed location or locations of such renewable energy systems and battery storage, and the electric generating capacity of such renewable energy systems and battery storage;

e. A timetable for implementation of the proposed replacement strategy that shall not exceed five years from the date of renewal of the operating permit and that shall ensure that the renewable energy systems and battery storage are fully operational, and the operations of the peaker plant can be completely replaced, on or before five years from the date of renewal of the operating permit; and

f. A demonstration of how the proposed renewable energy systems and battery storage strategy and timetable for implementation will comply with the renewable energy goals set forth in section sixty-six-p of the public service law.

2. The department shall provide public notice of the mandatory replacement and compliance plan and an opportunity for public comment on the plan of not less than sixty days. The department shall hold at least two public hearings on the plan in the affected environmental justice community or communities, with such public hearings offering video participation and accessibility.

3. After review and consideration of public comments, the department shall approve, approve with modifications or disapprove the plan.

4. Upon approval of the mandatory replacement and compliance plan, the owner or operator of the replaceable peaker plant shall implement the plan in accordance with the schedule set forth in the plan and provide to the department an annual compliance and progress report beginning one year after the department approves the plan. The department shall make each annual compliance and progress report available on its website.

5. If the department disapproves a proposed plan, the department shall inform the owner or operator of the replaceable peaker plant in writing of the reasons for such disapproval and shall identify the portions of the disapproved plan that need to be modified. The owner or operator shall submit a modified plan within sixty days of receiving the department's written notice of disapproval. The modified plan shall be subject

to the notice and public comment and hearing procedures set forth in this section.

§ 19-1307. Extensions for cause.

1. The owner or operator of a replaceable peaker plant may apply to the department for a single five-year extension of the deadline for replacement set forth in section 19-1305 of this article.

2. The department shall provide public notice of the application for any such extension, and an opportunity for public comment on such application, of not less than sixty days. The department shall hold at least two public hearings on the application in the affected environmental justice community or communities, with such public hearings offering video participation and accessibility. Any such public hearings shall also explore the option of transitioning the replaceable peaker plant into the ownership or control of the New York power authority, an entity that currently owns and operates several peaker plants in the state, to manage the transition to renewable energy and battery storage systems.

3. After review and consideration of public comments, the department shall approve, approve with modifications, or disapprove the application for a single five-year extension.

4. The department may only grant an application for an extension request upon a showing by the applicant, by clear and convincing evidence, that (a) replacement of the plant with renewable energy systems and battery storage by the deadline is not feasible, (b) the department of public service, in consultation with the New York independent system operator, has made a written determination that extending the deadline for the plant is necessary to maintain reliability of the electric grid, and (c) the continued operation of the peaker plant would not result in adverse health impacts for the impacted environmental justice communities.

§ 19-1309. Prohibitions.

1. Except as provided in section 19-1307 of this title, no person shall operate a replaceable peaker plant that is not in compliance with the requirements of this title and the department shall not issue an operating permit or renew an operating permit for a replaceable peaker plant that does not have an approved mandatory replacement and compliance plan.

2. The department shall not issue an operating permit or renew an operating permit for a replaceable peaker plant that has not completed implementation of a mandatory replacement and compliance plan by the deadline set forth in the plan.

§ 19-1311. Exemptions.

1. A replaceable peaker plant is not subject to the requirements of this title if the owner or operator of the plant has submitted written notification to the department of public service that the plant will be permanently retired on or before the first day of January, two thousand twenty-six.

2. The department shall, effective on or before the first day of January, two thousand twenty-six, revoke the operating permit of a replaceable peaker plant for which written notification has been provided to the department of public service pursuant to subdivision one of this section.

§ 3. This act shall take effect immediately.