STATE OF NEW YORK

105

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. QUART, ROZIC -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to establishing a renewable portfolio standard

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

Section 1. The public service law is amended by adding a new article 12 to read as follows:

ARTICLE 12

RENEWABLE PORTFOLIO STANDARD

Section 250. Purpose and scope.
251. Definitions.
252. Amount of renewable energy required.
253. Energy that qualifies for a solar renewable energy certificate; registration requirement.
254. Using renewable energy certificates and solar renewable energy certificates for renewable portfolio standard compliance.
255. Issuance of renewable energy certificates and solar renewable energy certificates.
256. Alternative compliance payments.
257. Demonstrating compliance, reporting and recordkeeping.
258. Enforcement.

§ 250. Purpose and scope. 1. Each electric corporation that sells electricity to retail customers in New York state, shall include in its electric energy portfolio electricity generated from renewable energy sources. This article is designed to encourage the development of renewable sources of electricity and new, cleaner generation technology; minimize the environmental impact of air pollutant emissions from electric generation; reduce possible transport of emissions and minimize any

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

LBD01359-01-1

adverse environmental impact from deregulation of energy generation; and support the reliability of the supply of electricity in the state.

2. This article governs the retail electricity sales of each electric corporation. This article does not govern installed capacity obligations.

3. This article does not apply to a private or government aggregator that contracts for electric generation service or electric related services, either separately or bundled, for its own facilities or on behalf of other business and residential customers in this state. This article does not apply to an energy agent. An electric corporation that is contractually obligated to sell electricity to an aggregator shall comply with this article by including the amount sold to the aggregator as part of its energy portfolio.

§ 251. Definitions. As used in this article, unless the context otherwise requires, the following terms shall have the following meanings:

1. "Alternative compliance payment" means a payment of a certain dollar amount per megawatt hour, which an electric corporation may submit to comply with the renewable energy requirement set forth in this article.

2. "Attribute" means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted, and tracked.

3. "Bioenergy crop" means plants cultivated and harvested specifically for use as fuel for the purpose of generating electricity.

4. "Biomass" means any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, wood and wood residues, animal wastes, and other waste materials.

5. "Black liquor" means a viscous liquid containing inorganic chemicals and organic material such as lignin and aliphatic acids, which is separated from wood during chemical pulping.

6. "Energy portfolio" means all of the electrical energy supplied by a particular electric power supplier or basic generation service provider to retail customers in the state.

7. "Energy year" means the twelve month period from April first through March thirty-first and shall be numbered according to the calendar year in which it ends.

8. "Fossil fuel" means natural gas, petroleum, coal, or any form, of solid, liquid, or gaseous fuel derived from such material.

9. "Fuel cell" means an electrochemical device that converts chemical energy in a hydrogen or hydrogen-rich fuel directly into electricity, without combustion.

10. "Generation attribute tracking system" means the environmental and emissions attributes tracking system for electric generation that is administered by New York state energy research and development authority pursuant to subdivision nineteen of section eighteen hundred fifty-four of the public authorities law.

11. "Geothermal energy" means energy generated by a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust.

12. "Installed capacity obligation" means the requirement for an electric power supplier or basic generation service provider to obtain an amount of electrical generation capacity to meet load service obli-

gations under the reliability rules of the New York independent system operator. Installed capacity includes the generation capacity which a company considers part of its own electric system, including wholly owned units, jointly-owned units, non-utility generation (NUGs), and purchases.

13. "Net metering" means a system of metering and billing for electricity in which the electric corporation or the electric distribution company:

(a) credits a customer-generator at the full retail rate for each kilowatt-hour produced by a renewable energy system installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during an annualized period, except for residential micro combined heat and power (micro-CHP) and fuel cell systems, which are credited at the avoided cost rate; and

(b) compensates the customer-generator at the end of the annualized period for any remaining credits, at a rate equal to the electric corporation's avoided cost of wholesale power.

14. "Old-growth timber" means wood or plant matter taken from a forest in the late successional stage of forest development, including plant matter taken from the forest floor. Late successional forests contain live and dead trees of various sizes, species, composition, and age class structure. The age and structure of old-growth timber varies significantly by forest type and from one biogeoclimatic zone to another.

15. "Qualification life" means, for any solar electric generation facility, the period beginning on the date on which the facility was authorized to energize and ending on the first March thirty-first that is at least fifteen years after the date of authorization to energize. A solar facility's qualification life applies to the facility itself, and to each piece of equipment included in the facility, regardless of any interruption in the solar facility's operation; or of any disassembly, relocation, sale or transfer of any piece of equipment included in the facility.

16. "Renewable energy certificate" means a certificate representing the environmental benefits or attributes of one megawatt-hour of generation from a generating facility that produces renewable energy, but shall not include a solar renewable energy certificate.

17. "Renewable fuel" means a fuel that is naturally regenerated over a short time scale and is either derived from the sun (such as thermal, photochemical or photoelectric), or from other natural sources such as wind, hydropower, geothermal and tidal energy, or photosynthetic energy stored in biomass. This term does not include a fossil fuel, a waste product from a fossil source, or a waste product from an inorganic source.

18. "Resource recovery facility" means a solid waste facility that incinerates solid waste for the purposes of producing energy and recovering metals and other materials for reuse.

19. "Solar alternative compliance payment" means a payment of a certain dollar amount per megawatt-hour, which an electric corporation may submit to the commission to comply with the solar electric generation requirements set forth in this article.

20. "Solar electric generating facility" or "solar facility" means equipment used to produce solar electric generation.

21. "Solar electric generation" means creation of electricity using a system that employs solar radiation to produce energy that powers an

electric generator. Solar electric generation includes technologies that utilize the photovoltaic effect.

22. "Solar renewable energy certificate" means a certificate issued by the commission or its designee, which represents one megawatt-hour of solar energy that is generated by a facility connected to the distribution system in New York, and has value based upon, and driven by, the energy market.

23. "Voluntary clean electricity market" or "voluntary clean electricity program" means any program, system, market or procedure through which retail electric customers may elect to purchase a renewable energy product on a voluntary basis. New York's power to choose program is a voluntary clean electricity program.

§ 252. Amount of renewable energy required. 1. Each electric corporation that sells electricity to retail customers in the state shall ensure that the electricity it sells each energy year in the state includes at least the minimum amount of qualified renewable energy required for that energy year. The minimum amount of qualified renewable energy shall be:

(a) for energy years two thousand twenty-three through two thousand twenty-seven, thirty percent;

(b) for energy year two thousand twenty-eight, forty percent with at least two percent derived from solar energy.

2. The commission shall adopt rules setting minimum amounts of renewable energy required for energy year two thousand twenty-nine and each subsequent energy year. The minimum amounts of renewable energy required shall be no lower than those required for energy year two thousand twenty-eight. The commission, in consultation with the department of environmental conservation, electric distribution companies, the utility intervention unit of the department of state, the Public Utility Law Project of New York, Inc., the solar energy industry and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in this chapter, taking into account the cost impacts and public benefits of such increases including, but not limited to:

(a) reductions in air pollution, water pollution, land disturbance and greenhouse gas emissions;

(b) reductions in peak demand for electricity and natural gas and the overall impact on the costs to electricity and natural gas customers;

(c) increases in renewable energy development, manufacturing, investment and job creation opportunities in New York; and

(d) reductions in state and national dependence on fossil fuels.

3. An electric corporation shall meet the requirements for solar electric generation through:

(a) retirement of solar renewable energy certificates through a renewable energy trading program approved by the commission in consultation with the department of environmental conservation; or

(b) submittal of one or more solar alternative compliance payments.

4. The following shall apply to the type of energy, and type of documentation, used for compliance with each of the requirements in this article:

(a) solar renewable energy certificates may be used to meet any requirement for solar electric generation;

(b) renewable energy certificates may be used to meet renewable energy requirements, but shall not be used to meet solar electric generation requirements.

5. An electric corporation shall not demonstrate compliance with this article using direct supply of any type of renewable energy.

6. The same renewable energy shall not be used for more than one of the following:

(a) creation of a solar renewable energy certificate; or

(b) creation of a renewable energy certificate; or

(c) creation of a renewable energy certificate, or of any other type of attribute or credit, under authority other than the authority granted in section two hundred fifty-five of this article such as another state's renewable energy standards or any voluntary clean electricity market or voluntary clean electricity program.

7. Each megawatt-hour of retail electricity supplied in New York by an electric corporation subject to this article carries with it an accompanying solar obligation. All electric corporation solar obligations, taken together, must equal the statewide solar obligation set forth in subdivision nine of this section for energy year two thousand twenty-eight.

8. For electricity supplied during energy year two thousand twenty-eight, an electric corporation shall calculate its solar obligation as two percent of the total energy generated by the electric corporation.

9. The total statewide solar obligation shall be two percent of the total electricity sold to all retail customers.

§ 253. Energy that qualifies for a solar renewable energy certificate; registration requirement. 1. To be eligible to form the basis for a solar renewable energy certificate usable for compliance with this article, electricity shall meet all requirements in this section, as well as all other applicable requirements in this chapter. The registration process required in this section for construction of new solar electric generation facilities is intended to provide advance notice to the public and the renewable energy markets when increases in solar electric generation capacity in the state are planned. The registration process shall be administered by the commission or its designee.

2. To be eligible for issuance of a solar renewable energy certificate usable for compliance with this article, electricity shall:

(a) meet the definition of solar electric generation in section two hundred fifty-one of this article;

(b) be generated at a facility that has been issued either:

(i) for installations with a nameplate generating capacity of twenty-five thousand kilowatts or more, a certificate from the New York state board on electric generation siting and the environment pursuant to article ten of this chapter; or

(ii) for installations with a nameplate generating capacity of less than twenty-five thousand kilowatts, the relevant permits or certificates issued by the local authority.

(c) be generated during the generating facility's qualification life. Solar electric generation produced after the end of a facility's qualification life shall not be used as the basis for a solar renewable energy certificate; and

(d) be generated using equipment that meets either of the following criteria:

(i) the equipment is new; or

(ii) the equipment was previously used in a solar facility with an unexpired qualification life and all of the following criteria are met:

(1) the previous solar facility was located in New York;

(2) the previous solar facility was issued either:

(A) for installations with a nameplate generating capacity of twenty-five thousand kilowatts or more, a certificate from the New York state board on electric generation siting and the environment pursuant to article ten of this chapter; or

(B) for installations with a nameplate generating capacity of less than twenty-five thousand kilowatts, the relevant permits or certificates issued by the local authority.

(3) there are at least twelve full months left in the qualification life of the previous solar facility; and

(4) any sale or other transfer of the equipment during the qualification life of the previous solar facility is recorded with the commission.

3. To comply with paragraph (b) of subdivision two of this section, a solar electric generating facility:

(a) for installations with a nameplate generating capacity of twenty-five thousand kilowatts or more, that was not issued a certificate from the New York state board on electric generation siting and the environment pursuant to article ten of this chapter prior to the effective date of this article shall obtain such a certificate through the registration process established pursuant to subdivision six of this section; or

(b) for installations with a nameplate generating capacity of less than twenty-five thousand kilowatts, that was not issued the relevant permits or certificates issued by the local authority prior to the effective date of this article shall obtain the relevant permits or certificates issued by the local authority through the registration process established pursuant to subdivision six of this section.

4. A solar electric generating facility, and all equipment included in or appurtenant to the solar facility, shall permanently retain the qualification life originally assigned to the solar facility, regardless of any interruption in the solar facility's operation, or any relocation, sale or transfer of the facility or of any of the equipment.

5. If the applicable submittal deadline in subdivision three of this section is met, solar renewable energy certificates, based on electricity generated by the solar facility, shall be usable for compliance with this chapter immediately upon the issuance of either a certificate from the New York state board on electric generation siting and the environment pursuant to article ten of this chapter or the relevant permits or certificates issued by the local authority for the facility, subject to any other applicable limits on use of solar renewable energy certificates. If the applicable deadline is not met, any solar renewable energy certificates based on electricity generated by the solar facility shall not be usable for compliance with this article until twelve months after the solar facility has received authorization to energize in accordance with the commission's standardized interconnection rules.

6. The commission shall determine and publicize the process for registration of a solar electric generating facility within ninety days of the effective date of this article; provided, however, that such registration process shall require:

(a) the submittal of an initial registration no later than:

(i) ten business days after execution of the contract for purchase or installation of the photovoltaic panels to be used in the solar facility;

(ii) if a contract for purchase or installation of photovoltaic panels for the solar facility was executed prior to the effective date of this section the deadline for submittal of an initial registration package shall be ninety days after the effective date of this section; or

(iii) in a case where a conditional registration or extension was previously issued but expired before construction of the solar facility was substantially completed, a new registration package shall be submitted prior to completion of construction;

(b) that construction of the solar facility shall not begin until the commission has issued a conditional registration for the facility; and

(c) that construction of the solar facility shall be completed and local code approval granted prior to the expiration of the conditional registration or any extension of such conditional registration.

§ 254. Using renewable energy certificates and solar renewable energy certificates for renewable portfolio standard compliance. 1. A renewable energy certificate or solar renewable energy certificate shall be used to meet renewable portfolio standard requirements for specific energy years, based on the type of renewable energy upon which the renewable energy certificate or solar renewable energy certificate is based, and the energy year during which the renewable energy was generated, as follows:

(a) A solar renewable energy certificate based on energy generated on or after April first, two thousand twenty-eight shall be used to comply with renewable portfolio standard requirements for any one of the following three energy years:

(i) the energy year in which the underlying energy was generated; or

(ii) either of the two energy years immediately following the energy year in which the underlying energy was generated;

(b) A solar renewable energy certificate based on energy generated before April first, two thousand twenty-eight shall be used only to comply with the requirements of this article for the energy year during which the underlying energy was generated, and/or the subsequent energy year; and

2. Once a renewable energy certificate or solar renewable energy certificate has been used for compliance with this article, the renewable energy certificate or solar renewable energy certificate shall be permanently retired and shall not be used again.

§ 255. Issuance of renewable energy certificates and solar renewable energy certificates. 1. The New York state energy and research development authority shall issue renewable energy certificates and solar renewable energy certificates for use in complying with this article.

2. The commission may issue an order discontinuing the designation of the New York state energy and research development authority under subdivision one of this section, and/or approving use of renewable energy certificates or solar renewable energy certificates issued by another entity for compliance with this article. The commission shall post a notice of its intent to issue such an order at least thirty days prior to issuing the order, and may, in its discretion, choose to accept public comment on the notice.

3. Beginning April first, two thousand twenty-eight, in measuring generation to determine the number of renewable energy certificates or solar renewable energy certificates to issue, the commission or its designee shall accept only readings of a meter that records kilowatt-hour production of electrical energy, and which meets all applicable requirements of this subdivision. The readings may be taken or submitted by any person, but shall be verified by the commission or its designee in accordance with the American National Standards Institute (ANSI) Standard C12.1-2008, Electric Meters Code for Electricity Metering, as amended or supplemented.

4. The commission or its designee shall issue renewable energy certificates and solar renewable energy certificates in whole units, each representing the environmental attributes of one megawatt-hour of electric generation.

5. Electric generation qualifies for issuance of renewable energy certificates or solar renewable energy certificates only if:

(a) it is solar electric generation produced by a generating facility that is interconnected with an electric distribution system that supplies electricity to one or more end users located in New York; or

(b) it is renewable energy, other than solar electric generation, and one or more of the following requirements is met:

(i) the generating facility reports its generation electronically to the New York state energy research and development authority no less frequently than monthly, and complies with any additional requirements established by the New York state energy research and development authority;

(ii) both of the following requirements are met:

(1) the generating facility reports its generation electronically no less frequently than monthly to an electric distribution company that then provides the generator's report electronically no less frequently than monthly to the New York state energy research and development authority; and

(2) the generating facility complies with any additional requirements established by the New York state energy research and development authority.

6. If a generator has accumulated a fraction of a megawatt-hour by the end of an energy year, the fraction may be carried over and combined with energy generated in a subsequent energy year in order to make a full megawatt-hour that is eligible for a renewable energy certificate or solar renewable energy certificate. In such a case, the combined energy shall be eligible for issuance of a renewable energy certificate or solar renewable energy certificate only during the energy year in which accumulated generation reaches one full megawatt-hour. Only a fraction of a megawatt-hour shall be carried over.

7. The commission shall require submittal of information and certifications needed to enable the commission or its designee to verify the generation that forms the basis of the requested renewable energy certificates. The commission shall require inspections, as appropriate, of generation equipment, monitoring and metering equipment, and other facilities relevant to verifying electric generation. The commission shall impose application fees, inspection fees and other charges for any work required to verify electric generation and issue renewable energy certificates or solar renewable energy certificates.

8. The commission or its designee shall not issue a renewable energy certificate or solar renewable energy certificate based on electric generation that has previously been used for compliance with this article, or that has been used to satisfy another state's renewable energy requirements or any voluntary clean electricity market or program.

9. A customer-generator that is eligible for net metering owns the renewable attributes of the energy it generates on or after April first, two thousand twenty-eight, unless there is a contract with an express provision that assigns ownership of the renewable attributes. The owner of a solar electric generation facility that is not eligible for net metering owns the renewable attributes of the energy it generates on or after April first, two thousand twenty-eight, unless there is a contract

with an express provision that assigns ownership of the renewable attributes.

§ 256. Alternative compliance payments. 1. An electric corporation may choose to comply with renewable portfolio standard requirements by submitting one or more alternative compliance payments or solar alternative compliance payments. An electric corporation that wishes to use alternative compliance payments or solar alternative compliance payments to comply with this article shall meet the requirements of this section.

2. The chairman of the commission shall appoint an alternative compliance payments advisory committee to provide recommendations to the commission regarding the appropriate cost of alternative compliance payments and solar alternative compliance payments, as well as other characteristics of their use. The commission shall consider the advisory committee's recommendation and shall, through commission order, set prices for alternative compliance payments and solar alternative compliance payments. At a minimum, the price of an alternative compliance payment or a solar alternative compliance payment shall be higher than the estimated competitive market cost of the following:

(a) the cost of meeting the requirement through purchase of a renewable energy certificate or solar renewable energy certificate; or

(b) the cost of meeting the requirement through generating the required renewable energy.

3. The commission shall establish and maintain a fifteen year solar alternative compliance payment schedule. The commission may increase the solar alternative compliance payment amount for one or more energy years after appropriate notice and opportunity for public comment and public hearing. However, the commission shall neither reduce the previously established solar alternative compliance payment amounts, nor provide any type of relief from the obligation to pay a solar alternative compliance payment.

4. The commission shall review the amount of alternative compliance payments, other than solar alternative compliance payments, at least once per year, in consultation with the alternative compliance payments advisory committee, and shall adjust these amounts as needed to comply with paragraphs (a) and (b) of subdivision two of this section and to reflect changing conditions in the environment, the energy industry and markets.

5. To comply with this article using alternative compliance payments or solar alternative compliance payments, an electric corporation shall submit the following to the commission, as applicable:

(a) one alternative compliance payment for each megawatt-hour of renewable energy required; or

(b) one solar alternative compliance payment for each megawatt-hour of solar electric generation required.

6. The commission shall use the alternative compliance payments monies submitted to meet the requirements of this article to fund renewable energy projects through the green jobs-green New York program.

7. For each energy year, all solar alternative compliance payment monies submitted to comply with solar electric generation requirements for that energy year shall be refunded to ratepayers by the electric distribution companies. The commission shall divide the total statewide solar alternative compliance payment monies to be refunded for a particular energy year among the electric distribution companies as follows:

(a) determine the total megawatt-hours of electricity subject to solar renewable portfolio standard requirements that was delivered by all electric distribution companies combined during the subject energy year;

(b) determine the number of megawatt-hours of electricity subject to solar renewable portfolio standard requirements that was delivered by the electric distribution company during the energy year;

(c) divide the number determined in paragraph (b) of this subdivision by the number determined in paragraph (a) of this subdivision to obtain a fraction that represents the electric distribution company's share of the total megawatt-hours of electricity subject to solar renewable portfolio standard requirements that were delivered during the energy year; and

(d) for each electric distribution company, multiply the fraction determined in paragraph (c) of this subdivision by the total statewide solar alternative compliance payment monies to be refunded for the energy year, to obtain a dollar figure for the amount of solar alternative compliance payment monies the electric distribution company shall refund.

§ 257. Demonstrating compliance, reporting and recordkeeping. 1. By October first of each year, each electric corporation shall file an annual report with the commission, demonstrating that the electric corporation has met the requirements of this article for the preceding reporting year.

2. If the annual report required under subdivision one of this section does not demonstrate that the electric corporation has supplied the renewable energy certificates or solar renewable energy certificates required by section two hundred fifty-two of this article for the previous reporting year, the annual report shall be accompanied by alternative compliance payments and/or solar alternative compliance payments in sufficient quantities to make up the shortfall.

3. The annual report shall contain the following basic information for the preceding reporting year:

(a) the total number of megawatt-hours of electricity sold to retail customers in the state;

(b) the total number of renewable energy certificates retired statewide for the purpose of compliance with this article;

(c) the percentage of the electric corporation's total statewide retail sales that the amount set forth under paragraph (b) of this subdivision represents;

(d) the total number of solar renewable energy certificates retired for the purpose of compliance with this chapter;

(e) the percentage of the electric corporation's total retail sales that the number in paragraph (d) of this subdivision represents;

(f) the total amount of solar electric generation and other renewable energy represented by renewable energy certificates submitted with the annual report;

(g) the total number of alternative compliance payments and solar alternative compliance payments submitted with the annual report;

(h) a summary demonstrating how compliance with the requirements of section two hundred fifty-two of this article has been achieved;

(i) an accounting issued by New York state energy research and development authority that shows the number of renewable energy certificates purchased or held by the electric corporation; and

(j) the price of each renewable energy certificate and solar renewable energy certificate that was retired during the energy year.

4. The documentation required by subdivision three of this section shall include the following:

(a) identification of each generating unit, including its location, fuel and technology type, and any unique state or federal facility or plant identification number;

(b) an affidavit from the operator of each generating unit that the specified amount of megawatt-hours from each renewable energy source was generated by or sold to the electric corporation and that the electric corporation has sole and exclusive title to the renewable energy and has not been used to meet the renewable portfolio standard energy requirements in any other state or jurisdiction;

(c) an affidavit from the electric corporation that the specified megawatt-hours were delivered into New York and complied with the commission's standard interconnection rules; and

(d) for each solar renewable energy certificate submitted, certification of compliance with the requirements of subdivision two of section two hundred fifty-three of this article that the renewable energy certificate has not been used to satisfy another state's renewable energy requirements. The certification shall be in a form required by the commission and available on the commission's website.

5. Failure of an electric corporation to demonstrate compliance with this article in accordance with this section, within the deadlines set forth in this section, shall subject the electric corporation to penalties under section two hundred fifty-eight of this article.

6. Each electric corporation shall keep all records pertaining to the requirements in this article for a period of five years, including data on megawatt-hours resulting from owned generation, contracts, purchases from the wholesale market, and purchases of renewable energy certificates. Each electric corporation shall make all pertinent records available for review upon request by the commission or its designee.

§ 258. Enforcement. 1. Failure to comply with any provision of this article shall subject the violator to the following penalties in accordance with the commission's regulatory and statutory authority:

(a) suspension or revocation of an electric power supplier's license or any other previously issued commission approval;

(b) financial penalties;

(c) disallowance of recovery of costs in rates; and

(d) prohibition on accepting new customers.

2. In determining the appropriate sanction, the commission shall consider the following criteria and any other factors deemed appropriate and material to the violator's failure to comply:

(a) the good faith efforts, if any, of the entity charged in attempting to achieve compliance;

(b) the gravity of the violation or failure to comply with the requirements in this chapter;

(c) the number of past violations by the entity charged regarding these standards and other standards adopted by the commission; and

(d) the appropriateness of the sanction or fine to the size of the company charged.

§ 2. This act shall take effect immediately.