STATE OF NEW YORK

3223

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. HUNTER -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the public service law, in relation to requiring zero emission certification for fossil fuel-fired electric generating units

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

Section 1. Short title. This act shall be known and may be cited as the "power plant zero carbon emissions act of 2023".

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

TITLE 13

POWER PLANT ZERO CARBON EMISSIONS

Section 19-1301. Statement of findings.
19-1303. Definitions.
19-1305. Mandatory zero carbon emission plan.
19-1307. Review of plans and certification.
19-1309. Prohibition.
19-1311. Requirements for facilities granted suspension or modification.
19-1313. Regulations.

§ 19-1301. Statement of findings.

1. Electric generating units that burn coal, oil, diesel or natural gas are significant sources of greenhouse gas emissions in the state.

2. The climate leadership and community protection act requires that the state achieve one hundred percent zero carbon electric generation by two thousand forty.

3. In order for the state to achieve this goal, existing fossil fuel-fired electric generating facilities must demonstrate that they will achieve zero greenhouse gas emissions by two thousand forty.

§ 19-1303. Definitions.

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

LBD07808-01-3

1. "Baseline emissions" shall mean maximum emissions of greenhouse gases by a covered facility occurring over any twelve-month period for the five years preceding the effective date of this title.

2. "Covered facility" shall mean an existing major electric generating facility as defined in paragraph b of subdivision 1 of section 19-0312 of this article that burns coal, oil, diesel or natural gas.

3. "Existing major electric generating facility" shall mean a facility in existence, or for which construction has commenced, as of the effective date of this title, and shall include a new facility proposed to replace an existing facility at the same or substantially same location whether or not construction of such new facility has commenced as of the effective date of this title.

4. "Greenhouse gas" shall have the same meaning as set forth in subdivision 7 of section 75-0101 of this chapter.

5. "Operating permit" shall have the same meaning as set forth in subdivision 18 of section 19-0107 of this article.

6. "Renewable energy systems" shall have the same meaning as set forth in section sixty-six-p of the public service law.

§ 19-1305. Mandatory zero carbon emission plan.

1. The owner or operator of a covered facility shall submit to the department as part of an application for a new operating permit or an application to renew an existing operating permit a written plan and supporting documentation demonstrating that the facility's operations will, on or before the first day of January, two thousand forty, achieve zero emissions of greenhouse gases.

2. The plan shall include, at a minimum, the following:

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

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

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

d. The facility's annual emissions of greenhouse gases, expressed in tons of carbon dioxide equivalents;

e. The verifiable and enforceable operational measures, emission controls, fuel use, renewable replacement technologies, battery storage, or any combination thereof, the facility will institute in order to achieve zero emissions of greenhouse gases on or before the first day of January, two thousand forty; and

f. The schedule for implementation of each of the measures identified in the plan.

3. The owner or operator of a covered facility may submit to the department, in lieu of a mandatory zero emission plan, written certification that it will cease operations on or before the first day of January, two thousand forty. Such certification shall specify the date that the covered facility will cease operations and include proof that the department of public service has been notified of the date that the facility will cease operations.

§ 19-1307. Review of plans and certification.

1. The department shall review a plan submitted by a covered facility and shall approve such plan if it demonstrates that the facility will achieve, on or before the first day of January, two thousand forty, zero emissions of greenhouse gases. The department shall not approve the plan unless it determines that the operational measures, emission controls, fuel use, renewable replacement technologies, battery storage, or any combination thereof, set forth in the plan are verifiable, enforceable and achievable based on currently existing technology or technology that

will be reasonably available and reliable within the timeframe for implementation set forth in the plan.

2. The department shall provide public notice of the zero carbon emission plan and an opportunity for public comment on the plan of not less than sixty days. The department shall hold at least one public hearing on the plan in the community in which the covered facility is located.

3. After review and consideration of public comments, the department shall approve or disapprove the plan. If the department approves the plan, it shall issue a written certification that the covered facility complies with the requirements of this title.

4. Upon approval of the mandatory zero carbon emission plan, the owner or operator of the covered facility 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 covered facility in writing of the reasons for such disapproval. 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.

§ 19-1309. Prohibition.

The department shall not issue a new operating permit or renew an existing operating permit for a covered facility unless the owner or operator of the facility has submitted to the department (i) a mandatory zero carbon emission plan that has been approved by the department and for which a written certification pursuant to section 19-1307 of this title has been issued; or (ii) written certification that it will cease operations on or before the first day of January, two thousand forty.

§ 19-1311. Requirements for facilities granted suspension or modification.

1. In the event the public service commission grants a covered facility a suspension or modification pursuant to subdivision four of section sixty-six-p of the public service law of the obligation to achieve zero emissions, the owner or operator of such covered facility shall submit to the department as part of an application for a new operating permit or an application to renew an existing operating permit a written carbon emission reduction plan and supporting documentation demonstrating that the facility's operations will, on or before the first day of January, two thousand forty, achieve a two-to-one reduction in greenhouse gas emissions as measured from the facility's baseline emissions of greenhouse gases.

2. The plan shall include, at a minimum, the following:

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

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

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

d. The facility's annual emissions of greenhouse gases, expressed in tons of carbon dioxide equivalents;

e. The verifiable and enforceable operational measures, emission controls or carbon offsets, or any combination thereof, the facility will institute or obtain in order to achieve a two-to-one reduction in greenhouse gas emissions on or before the first day of January, two thousand forty, together with an analysis of the reduction in tons of

carbon dioxide equivalents for each such operational measure, emission control or carbon offset; and

f. The schedule for implementation of each of the measures identified in the plan.

3. In order to meet the requirements of this section, a covered facility granted a suspension or modification may utilize carbon offsets. Offsets shall be verifiable, enforceable and achievable.

4. Carbon offsets shall include the greenhouse gas emission offset projects identified in subdivision 10 of section 75-0101 of this chapter; carbon dioxide removal by direct air capture; and the purchase of zero emission vehicles for bus fleets serving a school district or municipality.

5. For purposes of this section direct air capture shall mean a facility, technology, or system that is powered by renewable energy and that uses carbon capture equipment to capture carbon dioxide directly from the air. The term direct air capture does not include any facility, technology, or system that captures carbon dioxide that is deliberately released from a naturally occurring subsurface spring or from natural photosynthesis.

6. The department's review of the carbon reduction plan shall comply with the procedures and requirements set forth in section 19-1307 of this title.

§ 19-1313. Regulations.

The department is authorized to promulgate such rules and regulations as may be necessary to implement the provisions of this title.

§ 3. Subdivision 3 of section 168 of the public service law, as added by chapter 388 of the laws of 2011, is amended to read as follows:

3. The board may not grant a certificate for the construction or operation of a major electric generating facility, either as proposed or as modified by the board, unless the board determines that:

(a) the facility is a beneficial addition to or substitution for the electric generation capacity of the state; and

(b) the construction and operation of the facility will serve the public interest; and

(c) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; and

(d) if the board finds that the facility results in or contributes to a significant and adverse disproportionate environmental impact in the community in which the facility would be located, the applicant will avoid, offset or minimize the impacts caused by the facility upon the local community for the duration that the certificate is issued to the maximum extent practicable using verifiable measures; and

(e) the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the board may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement, including, but not limited to, those relating to the interconnection to and use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. The board shall provide the municipality an opportu-

nity to present evidence in support of such ordinance, law, resolution, regulation or other local action issued thereunder[.]; and

(f) the facility has received a written certification from the department of environmental conservation pursuant to section 19-1307 of the environmental conservation law or has submitted a written certification to the department and the department of environmental conservation pursuant to subdivision three of section 19-1305 of the environmental conservation law.

§ 4. This act shall take effect immediately.