

# 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:

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

3 § 2. Article 19 of the environmental conservation law is amended by  
4 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.

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

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

21 3. In order for the state to achieve this goal, existing fossil fuel-  
22 fired electric generating facilities must demonstrate that they will  
23 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.

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

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

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

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

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

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

19 § 19-1305. Mandatory zero carbon emission plan.

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

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

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

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

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

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

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

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

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

48 § 19-1307. Review of plans and certification.

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

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

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

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

11 4. Upon approval of the mandatory zero carbon emission plan, the owner  
12 or operator of the covered facility shall implement the plan in accord-  
13 ance with the schedule set forth in the plan and provide to the depart-  
14 ment an annual compliance and progress report beginning one year after  
15 the department approves the plan. The department shall make each annual  
16 compliance and progress report available on its website.

17 5. If the department disapproves a proposed plan, the department shall  
18 inform the owner or operator of the covered facility in writing of the  
19 reasons for such disapproval. The owner or operator shall submit a modi-  
20 fied plan within sixty days of receiving the department's written notice  
21 of disapproval. The modified plan shall be subject to the notice and  
22 public comment and hearing procedures set forth in this section.

23 § 19-1309. Prohibition.

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

31 § 19-1311. Requirements for facilities granted suspension or modifica-  
32 tion.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 § 19-1313. Regulations.

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

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

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

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

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

35 (c) the adverse environmental effects of the construction and opera-  
36 tion of the facility will be minimized or avoided to the maximum extent  
37 practicable; and

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

44 (e) the facility is designed to operate in compliance with applicable  
45 state and local laws and regulations issued thereunder concerning, among  
46 other matters, the environment, public health and safety, all of which  
47 shall be binding upon the applicant, except that the board may elect not  
48 to apply, in whole or in part, any local ordinance, law, resolution or  
49 other action or any regulation issued thereunder or any local standard  
50 or requirement, including, but not limited to, those relating to the  
51 interconnection to and use of water, electric, sewer, telecommunication,  
52 fuel and steam lines in public rights of way, which would be otherwise  
53 applicable if it finds that, as applied to the proposed facility, such  
54 is unreasonably burdensome in view of the existing technology or the  
55 needs of or costs to ratepayers whether located inside or outside of  
56 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.