

# STATE OF NEW YORK

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2023-2024 Regular Sessions

## IN SENATE

January 20, 2023

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Introduced by Sens. PARKER, ADDABBO, GOUNARDES, KENNEDY -- read twice  
and ordered printed, and when printed to be committed to the Committee  
on Energy and Telecommunications

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 Assem-  
bly, 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.