STATE OF NEW YORK

2468

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

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 Assembly, do enact as follows:

Section 1. Legislative findings and intent. The legislature hereby finds and determines:

1. New York is a national leader in developing and implementing policy to promote the development of renewable energy resources, the growth of which has significantly benefited the state in numerous ways, including through reductions in pollutants that contribute to climate change, associated reductions in adverse impacts on public health, and substantial job growth in the clean energy sector.

2. To further promote and incentivize the development of renewable energy, New York state recently adopted the Climate Leadership and Community Protection Act (CLCPA), which, among other things, mandates that by 2030, 70% of electricity consumed in the state will come from renewable resources, and 100% of such electricity be renewable by 2040 (CLCPA targets). In 2019, approximately 27 percent of the state's electric load (representing 41,340 gigawatt hours) was supplied by renewable resources - solar, wind, hydroelectric, biomass, fuel cells and similar resources.

3. However, a recently published triennial review of the clean energy standard (CES) found that falling commodity market revenues in the wholesale energy markets create a risk that legacy renewable generators may not be able to cover their costs. These facilities have options to export to neighboring renewable portfolio standard (RPS) compliance markets and will do so if the renewable energy certificate (REC) revenue 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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4. Exports of legacy supply have increased since 2014 by about 0.5 TWh, and unless reversed would need to be made up from incremental sources of supply in order to achieve CLCPA targets. There is a real and present danger that a significant portion of New York's resources will either cease operations or sell increasing volumes of their RECs to neighboring markets. In either case, New York will not be able to count them towards the CLCPA targets.

5. A recent study shows that, in the wake of COVID-19, after reaching nearly 164,000 clean energy jobs statewide in 2019, the pandemic temporarily reversed multi-year growth trends. The clean energy industry can serve as a cornerstone for economic recovery, but that must begin with the retention of New York's existing valuable renewable assets.

6. The CES was established in a 2016 public service commission order, predating the CLCPA. In its original form, the CES was composed of a tier 1 for the development of new large-scale renewables, a maintenance tier 2 to provide short-term relief to economically distressed renewable resources, and a tier 3 to support the state's nuclear resources through ZECs. In 2018, the public service commission added a program related to offshore wind development. Despite numerous appeals from the renewable energy and environmental advocates, none of the public service commission's actions modified the program such that the state's existing renewable energy resources would be preserved as a baseline onto which to add in pursuit of the state's laudable and aggressive environmental goals.

7. In 2019, the CLCPA was passed and signed into law. In the meantime, during the period between the implementation of the CES to the CLCPA becoming law (2016-2019), exports of baseline renewable generation increased by approximately 50 percent - a direct contrast to the objectives of both initiatives. Given that numerous RPS contracts will be expiring in the near term, the public service commission has stated that it expects this trend to continue, potentially putting New York at risk of not reaching the 70 by 30 target.

8. Also, in 2019, a separate energy-related bill passed both houses of the legislature. That bill would have created a truly supportive tier 2 requiring the New York state energy research and development authority (NYSERDA) to procure RECs from all eligible existing renewable resources at a discounted rate (75%) of the current tier 1 REC price. That proposed legislation rightfully recognized that to promote achievement of the CLCPA targets, and to ensure the continued job growth and other benefits attendant to a clean energy economy, New York needs to assure that its existing renewable resources are provided with adequate price signals and financial incentives to remain in operation and to sell their renewable energy attributes in New York. Absent these assurances, it would be difficult if not impossible for the state to meet the recently established targets.

9. The governor vetoed the tier 2 legislation, citing in large part that payments would be made to renewable resources on a non-competitive basis. However, he ordered NYSERDA and the department of public service to develop a program "to provide qualified legacy renewable energy resources in New York State with appropriate support to continue to competitively operate and contribute to the State's clean energy goals."

10. In response to the veto message, NYSERDA filed a petition with a proposed framework for a competitive tier 2, which the public service commission adopted in an October 2020 order modifying the clean energy standard. The program would issue annual solicitations over three years, with the winning bidders receiving three-year contracts to sell their

RECs to NYSERDA at the accepted price. NYSERDA's stated goal was to procure approximately one-third of the renewable baseline RECs in each auction.

11. However, the first ever competitive tier 2 solicitation, completed in May 2021, netted awards to just three renewable facilities that total less than 14 MW, while the eligible baseline capacity well exceeds 1,000 MW. The low volume of awards is directly attributable to offers being rejected due to a confidential price cap utilized by NYSERDA, which does not accurately reflect the price needed to keep New York's renewable resources in New York.

12. Even had NYSERDA accurately valued existing renewables, the competitive tier 2 program is set to have the contracts from its third and final solicitation expire at the conclusion of 2025, a full four years before the first CLCPA renewable target date of 2030. This chasm provides no assurances to renewable resources that they should invest in their assets or keep their RECs in the state in the critical years leading up to the 70 by 30 target.

13. New York's ability to meet the CLCPA targets will be hampered if such existing resources provide their wholesale energy products for delivery to adjacent states, some of which have enacted laws that provide for a robust market that provides a stronger opportunity to sell renewable energy attributes than is currently available in New York.

14. It also is of paramount importance to ensure the fuel diversity of the state's energy sector for the purposes of providing energy security, system reliability and protection of consumers from potential price spikes or shortages. For this same reason, it is important for the state to take measures to ensure the continued viability and competitive position of a wide variety of large-scale, renewable energy resources in the state.

15. Accordingly, the overlying intent of this act is to modify the competitive tier 2 program such that it appropriately values maintaining the state's renewable baseline and provides existing large-scale, renewable energy resources in New York state with appropriate financial incentives to continue operations for the foreseeable future.

§ 2. Definitions. As used in this act:

1. "Competitive tier 2 program" refers to the renewable baseline retention program created within the order modifying the clean energy standard and being administered by NYSERDA.

2. "Eligible competitive tier 2 resource" shall have the same meaning as contained in the order adopting modifications to the clean energy standard: (a) existing non-state-owned run-of-river hydropower and existing wind generators located within the State; (b) that have entered commercial operation prior to January 1, 2015, and (c) are not already under contract with NYSERDA.

3. "Renewable energy credit" means a tradable, non-tangible energy commodity that represents proof that 1 megawatt-hour (MWh) of electricity was generated from a renewable energy resource.

4. "Tier 1" means the program designated as tier 1 pursuant to the order adopting a clean energy standard and subsequently refined within the order modifying the clean energy standard.

5. "Tier 2 renewable energy credit" refers to a renewable energy credit generated by an eligible competitive tier 2 resource.

6. "Maximum bid price" shall mean the price employed by NYSERDA above which offers submitted in the competitive tier 2 program would be rejected.

7. "Order adopting a clean energy standard" means the public service commission order dated August 1, 2016 and entered in case number 15-E-2203 et seq.

8. "Order modifying the clean energy standard" means the public service commission order dated October 15, 2020, and entered in case number 15-E-2203 et seq.

§ 3. Modifications to the competitive tier 2 program. 1. The public service commission, in consultation with the New York state energy research and development authority, shall modify the following provisions of the competitive tier 2 program within 30 days of the effective date of this act, to provide support to and for eligible competitive tier 2 resources.

2. Maximum bid price. The maximum bid price utilized by NYSERDA for each solicitation conducted within the competitive tier 2 program shall be set equal to 75% of NYSERDA's tier 1 REC sale price established for the most recently completed Renewable Energy Standard (RES) compliance year for tier 1 RECs.

3. Program cost cap. The $200 million cost cap on total program expenditures imposed by the order modifying the clean energy standard is eliminated. Program costs will be determined by the volume of accepted offers, as determined by NYSERDA's annual targets, multiplied by the price of accepted offers no greater than the maximum bid price.

4. Program duration. The competitive tier 2 program shall remain in place and NYSERDA shall conduct annual solicitations for tier 2 RECs such that the final solicitation will result in NYSERDA procuring tier 2 RECs under awarded contracts through the year 2030.

5. Annual targets for tier 2 renewable energy credits. The target volume of tier 2 RECs in each of NYSERDA's annual tier 2 solicitation shall be one-half the quantity of renewable energy generation that is serving total electric load in New York state, excluding generation from facilities owned by the power authority of the state of New York or otherwise under contract with NYSERDA.

§ 4. This act shall take effect immediately.