STATE OF NEW YORK

522

2023-2024 Regular Sessions

IN ASSEMBLY

January 9, 2023

Introduced by M. of A. CARROLL, FORREST, MITAYNES, SIMON, MAMDANI, COLTON, DINOWITZ, KELLES, DAVILA, L. ROSENTHAL, SEPTIMO, THIELE -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing the "pollution justice act of 2023" and implementing a plan to replace peaker plants with renewable energy systems

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

Section 1. This act shall be known and may be cited as the "pollution justice 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

PEAKER PLANTS

Section 19-1301. Statement of findings.
19-1303. Definitions.
19-1305. Mandatory replacement and compliance plan.
19-1307. Extensions for cause.
19-1309. Prohibitions.
19-1311. Exemptions.

§ 19-1301. Statement of findings.

1. Electric generating units that generally operate during periods of peak electricity demand are known as peaker plants. Many peaker plants in the state are older fossil fuel-fired units that emit greenhouse gases and a variety of other harmful air pollutants including sulfur oxides, nitrogen oxides, particulates and mercury.

2. A substantial number of peaker plants are located in or adjacent to disadvantaged communities in the city of New York that already bear disproportionate pollution burdens due to a history of siting pollution sources in those communities.

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

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3. Pollutants from peaker plants contribute to significant public health problems. According to the New York city department of health and mental hygiene's air pollution and the health of New Yorkers report: "each year, PM2.5 pollution in (New York city) causes more than 3,000 deaths, 2,000 hospital admissions for lung and heart conditions, and approximately 6,000 emergency department visits for asthma in children and adults." According to the report, each year exposures to ozone concentrations above background levels cause an estimated "400 premature deaths, 850 hospitalizations for asthma and 4,500 emergency department visits for asthma."

4. Peaker plants often operate during summer months when air pollution levels are highest and their emissions add to existing pollution burdens in disadvantaged communities and contribute to adverse health effects in those communities from air pollution.

§ 19-1303. Definitions.

1. "Adjacent to" shall mean within a radius of one mile from the plant property boundary.

2. "Disadvantaged community" shall have the same meaning as in subdivision five of section 75-0101 of this chapter.

3. "Operating permit" shall have the meaning set forth in subdivision eighteen of section 19-0107 of this article.

4. "Renewable energy systems" shall have the meaning set forth in section sixty-six-p of the public service law and may also include firm zero emission resources such as long-duration energy storage.

5. "Replace" or "replacement" means the construction and operation of a renewable energy system or transmission and distribution infrastructure that enables the provision of the equivalent maximum annual power output achieved by the replaceable peaker plant during any single year during the ten years preceding the submission of an application to renew an operating permit.

6. "Replaceable peaker plant" means a major electric generating facility as defined in paragraph b of subdivision one of section 19-0312 of this article that burns coal, oil, diesel or natural gas and was operational and generated electricity less than fifteen percent of the year during at least two years between two thousand ten through two thousand nineteen and that is located in or adjacent to a disadvantaged community.

§ 19-1305. Mandatory replacement and compliance plan.

1. The owner or operator of a replaceable peaker plant in a city with a population of one million or more, within or adjacent to a disadvantaged community, shall submit to the department as part of an application to issue an operating permit or renew an operating permit, a mandatory replacement and compliance plan that shall include, at a minimum, the following:

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

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

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

d. A proposed strategy to replace the plant with renewable energy systems. The strategy shall, at a minimum, set forth the type or types of renewable energy systems to be utilized, the proposed location or locations of such renewable energy systems, and the electric generating capacity of such renewable energy systems;

e. A timetable for implementation of the proposed replacement strategy that shall not exceed five years from the date of renewal of the operat-

ing permit and that shall ensure that the renewable energy systems are fully operational, and the operations of the peaker plant can be completely replaced, on or before five years from the date of renewal of the operating permit; and

f. A demonstration of how the proposed renewable energy systems and timetable for implementation will comply with the renewable energy goals set forth in section sixty-six-p of the public service law.

2. The department shall provide public notice of the mandatory replacement and compliance plan and an opportunity for public comment on the plan of not less than sixty days. The department shall hold at least two public hearings on the plan in the affected disadvantaged community or communities that provide meaningful opportunities for public participation and maximize participation and accessibility.

3. After review and consideration of public comments, the department shall approve, approve with modifications or disapprove the plan.

4. Upon approval of the mandatory replacement and compliance plan, the owner or operator of the replaceable peaker plant 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 replaceable peaker plant in writing of the reasons for such disapproval and shall identify the portions of the disapproved plan that need to be modified. 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.

§ 19-1307. Extensions for cause.

1. The owner or operator of a replaceable peaker plant may apply to the department for a single five-year extension of the deadline for replacement set forth in section 19-1305 of this title.

2. The department shall provide public notice of the application for any such extension, and an opportunity for public comment on such application, of not less than sixty days. The department shall hold at least two public hearings on the application in the affected disadvantaged community or communities that provide meaningful opportunities for public participation and maximize participation and accessibility.

3. After review and consideration of public comments, the department shall approve, approve with modifications, or disapprove the application for a single five-year extension.

4. The department may only grant an application for an extension request upon a showing by the applicant, by clear and convincing evidence, that (a) replacement of the plant with renewable energy systems by the deadline is not feasible, (b) the department of public service, in consultation with the New York independent system operator, has made a written determination that extending the deadline for the plant is necessary to maintain reliability of the electric grid, and (c) the continued operation of the peaker plant would not result in adverse health impacts for the impacted disadvantaged communities.

§ 19-1309. Prohibitions.

1. No person shall operate a replaceable peaker plant that is not in compliance with the requirements of this title and the department shall not issue an operating permit or renew an operating permit for a

replaceable peaker plant that does not have an approved mandatory replacement and compliance plan.

2. The department shall not issue an operating permit or renew an operating permit for a replaceable peaker plant that has not completed implementation of a mandatory replacement and compliance plan by the deadline set forth in the plan.

§ 19-1311. Exemptions.

1. A replaceable peaker plant is not subject to the requirements of this title if the owner or operator of the plant has submitted written notification to the department of public service that the plant will be permanently retired on or before the first day of January, two thousand twenty-seven.

2. The department shall, effective on or before the first day of January, two thousand twenty-eight, revoke the operating permit of a replaceable peaker plant for which written notification has been provided to the department of public service pursuant to subdivision one of this section.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all permit applications or renewals on or after such date.