

# STATE OF NEW YORK

2955

2023-2024 Regular Sessions

## IN SENATE

January 26, 2023

Introduced by Sens. BRISPORT, HINCHEY, HOYLMAN-SIGAL, JACKSON, KRUEGER, MAY, RAMOS, RIVERA, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing the "pollution justice act" 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:

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

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

### TITLE 13

#### PEAKER PLANTS

7 Section 19-1301. Statement of findings.

8 19-1303. Definitions.

9 19-1305. Mandatory replacement and compliance plan.

10 19-1307. Extensions for cause.

11 19-1309. Prohibitions.

12 19-1311. Exemptions.

13 § 19-1301. Statement of findings.

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

19 2. A substantial number of peaker plants are located in or adjacent to  
20 disadvantaged communities in the city of New York and Long Island that  
21 already bear disproportionate pollution burdens due to a history of

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

LBD00532-02-3

1 siting pollution sources in those communities. More than one million New  
2 Yorkers live within one mile of a peaker plant.

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

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

17 5. The owners and operators of peaker plants have received billions of  
18 dollars in capacity payments from ratepayers over the last decade to  
19 subsidize operation of their plants, even though the plants primarily  
20 operate during peak load periods.

21 6. Fossil fuel-burning peaker plants can be replaced with renewable  
22 energy systems that will eliminate or significantly reduce air pollution  
23 impacts to disadvantaged communities from peaker plant operations.

24 7. Replacement of fossil fuel-burning peaker plants with renewable  
25 energy systems is in the public interest, will save millions of dollars  
26 in environmental and human health-related damages, will promote environ-  
27 mental justice and will assist in meeting the greenhouse gas emission  
28 reduction and energy storage goals of the climate leadership and commu-  
29 nity protection act.

#### 30 § 19-1303. Definitions.

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

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

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

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

40 5. "Replace" or "replacement" means the construction and operation of  
41 a renewable energy system, battery or energy storage, or transmission  
42 and distribution infrastructure that enables the provision of the equiv-  
43 alent maximum annual power output achieved by the replaceable peaker  
44 plant during any single year during the ten years preceding the  
45 submission of an application to renew an operating permit.

46 6. "Replaceable peaker plant" means a major electric generating facil-  
47 ity as defined in paragraph b of subdivision one of section 19-0312 of  
48 this article that burns coal, oil, diesel or natural gas and was opera-  
49 tional and generated electricity less than fifteen percent of the year  
50 during at least two years between two thousand eleven through two thou-  
51 sand twenty and that is located in or adjacent to a disadvantaged commu-  
52 nity.

#### 53 § 19-1305. Mandatory replacement and compliance plan.

54 1. The owner or operator of a replaceable peaker plant shall submit to  
55 the department as part of an application to renew an operating permit a

1 mandatory replacement and compliance plan that shall include, at a mini-  
2 mum, the following:

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

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

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

8 d. A proposed strategy to replace the plant with renewable energy  
9 systems or battery storage or a combination thereof. The strategy shall,  
10 at a minimum, set forth the type or types of renewable energy systems  
11 and battery storage to be utilized, the proposed location or locations  
12 of such renewable energy systems and battery storage, and the electric  
13 generating capacity of such renewable energy systems and battery stor-  
14 age;

15 e. A timetable for implementation of the proposed replacement strategy  
16 that shall not exceed five years from the date of renewal of the operat-  
17 ing permit and that shall ensure that the renewable energy systems and  
18 battery storage are fully operational, and the operations of the peaker  
19 plant can be completely replaced, on or before five years from the date  
20 of renewal of the operating permit; and

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

25 2. The department shall provide public notice of the mandatory  
26 replacement and compliance plan and an opportunity for public comment on  
27 the plan of not less than sixty days. The department shall hold at least  
28 two public hearings on the plan in the affected disadvantaged community  
29 or communities, with such public hearings offering video participation  
30 and accessibility.

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

33 4. Upon approval of the mandatory replacement and compliance plan, the  
34 owner or operator of the replaceable peaker plant shall implement the  
35 plan in accordance with the schedule set forth in the plan and provide  
36 to the department an annual compliance and progress report beginning one  
37 year after the department approves the plan. The department shall make  
38 each annual compliance and progress report available on its website.

39 5. If the department disapproves a proposed plan, the department shall  
40 inform the owner or operator of the replaceable peaker plant in writing  
41 of the reasons for such disapproval and shall identify the portions of  
42 the disapproved plan that need to be modified. The owner or operator  
43 shall submit a modified plan within sixty days of receiving the depart-  
44 ment's written notice of disapproval. The modified plan shall be subject  
45 to the notice and public comment and hearing procedures set forth in  
46 this section.

47 § 19-1307. Extensions for cause.

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

51 2. The department shall provide public notice of the application for  
52 any such extension, and an opportunity for public comment on such appli-  
53 cation, of not less than sixty days. The department shall hold at least  
54 two public hearings on the application in the affected disadvantaged  
55 community or communities, with such public hearings offering video  
56 participation and accessibility. Any such public hearings shall also

1 explore the option of transitioning the replaceable peaker plant into  
2 the ownership or control of the New York power authority, an entity that  
3 currently owns and operates several peaker plants in the state, to  
4 manage the transition to renewable energy and battery storage systems.

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

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

18 § 19-1309. Prohibitions.

19 1. Except as provided in section 19-1307 of this title, no person  
20 shall operate a replaceable peaker plant that is not in compliance with  
21 the requirements of this title and the department shall not issue an  
22 operating permit or renew an operating permit for a replaceable peaker  
23 plant that does not have an approved mandatory replacement and compli-  
24 ance plan.

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

29 § 19-1311. Exemptions.

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

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

40 § 3. This act shall take effect immediately.