STATE OF NEW YORK

737

2023-2024 Regular Sessions

IN SENATE

January 6, 2023

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

AN ACT to amend the public service law and the labor law, in relation to providing net revenues from utility-owned large-scale renewable generation projects to low-income customers and authorizes utility companies to own such projects

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

Section 1. Legislative findings and intent. 1. New York state recognizes the deleterious impacts of climate change including increasingly frequent catastrophic weather events.

2. Pursuant to the New York state climate leadership and community protection act (CLCPA), New York state seeks to dramatically reduce greenhouse gas emissions and move its electric generation from fossil fuel-based generation to renewable-based generation. New York state has mandated that seventy percent of electricity come from renewable energy sources by year 2030 and one hundred percent of electricity come from carbon neutral sources by 2040.

3. Further, New York state recognizes that the current pace of development of in-state renewable energy resources is insufficient to meet the state's statutory renewable generation goals on schedule.

4. Because New York state seeks to accomplish these energy-related goals and standards as soon as practicable allowing regulated utilities to own and operate renewable generation is essential to achieving such goals and to provide a consistent and affordable supply of carbon-free, renewably generated electricity by 2030, through 2050 and beyond.

5. New York state seeks to continue to develop in-state renewable energy projects that will drive down costs, benefit customers receiving retail electric delivery particularly those customers who are low to moderate income.

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

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6. New York state has a proprietary interest in these projects being efficiently built and operated without unnecessary disruptions, which justifies the use of project labor agreements and labor peace agreements.

§ 2. The public service law is amended by adding a new section 66-u to read as follows:

§ 66-u. Regulated large scale renewable generation. 1. In order to support the state in meeting state energy-related goals and standards, corporations subject to the provisions of this article providing retail electric service shall be authorized to own and operate renewable energy generating facilities in New York state. Such corporations shall be authorized to own and operate such facilities individually or in partnership with other persons doing business in New York.

2. A corporation owning and operating a renewable energy generation facility pursuant to this section shall provide all net revenues from such facility to low-income customers in the form of bill credits, which shall be in addition to any other program or benefit offered by the corporation to assist such customers.

3. In addition to the provisions of subdivision two of this section, any renewable energy generating facility owned by such a corporation shall be:

(a) subject to commission oversight in order to ensure that: (i) the power generated at such facilities remains in-state for the benefit of customers and the state; (ii) the power generated at such facilities shall not be exported out-of-state; and (iii) any repowering of such generating facilities shall comply with all requirements of this section;

(b) built, pursuant to a competitive third-party bidding process, which shall be issued by the corporation;

(c) subject to section sixty-six-r of this article and section two hundred twenty-four-d of the labor law; and

(d) owned and operated in a manner that provides beneficial cost and rate impacts to customers.

4. The commission shall establish a generation capacity limit for the total generation capacity owned by corporations pursuant to this section. The total generation capacity shall not exceed twenty-five percent of the total generation capacity needed to achieve the renewable energy goals described in section sixty-six-p of this article.

5. The commission shall issue such orders, rules and regulations as may be necessary and appropriate to implement this section.

§ 3. Section 66-r of the public service law, as added by section 2-a of part AA of chapter 56 of the laws of 2021, is amended to read as follows:

§ 66-r. Requirements for certain renewable energy systems. 1. For the purposes of this section, a "covered renewable energy system" means a renewable energy system, as such term is defined in section sixty-six-p of this article, with a capacity of greater than five megawatts alternating current and which involves the procurement of renewable energy credits by a public entity, or a third party acting on behalf and for the benefit of a public entity. **"Covered renewable energy system" shall also include any generation facility authorized pursuant to section sixty-six-u of this article.**

2. For purposes of this section, "public entity" shall include, but shall not be limited to, the state, a local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-

for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.

3. The commission shall require that the owner of the covered renewable energy system, or a third party acting on the owner's behalf, as an ongoing condition of any renewable energy credits agreement with a public entity, **or as an ongoing condition of its authorization to operate and support the state in meeting energy-related goals,** shall stipulate to the fiscal officer that it will enter into a labor peace agreement with at least one bona fide labor organization either where such bona fide labor organization is actively representing employees providing necessary operations and maintenance services for the renewable energy system at the time of such agreement or upon notice by a bona fide labor organization that is attempting to represent employees who will provide necessary operations and maintenance services for the renewable energy system employed in the state. The maintenance of such a labor peace agreement shall be an ongoing material condition of any continuation of payments under a renewable energy credits agreement **or authorization by the commission**. For purposes of this section "labor peace agreement" means an agreement between an entity and labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the relevant renewable energy system. "Renewable energy credits agreement" shall mean any public entity contract that provides production-based payments to a renewable energy project as defined in this section.

4.(a) **(1)** Any public entity, in each contract for construction, reconstruction, alteration, repair, improvement or maintenance of a covered renewable energy system which involves the procurement of a renewable energy credits agreement by a public entity, or a third party acting on behalf and for the benefit of a public entity, the "public work" for the purposes of this subdivision, shall ensure that such contract shall contain a provision that the iron and structural steel used or supplied in the performance of the contract or any subcontract thereto and that is permanently incorporated into the public work, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of a structural iron or structural steel product all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives. For the purposes of this subdivision, "permanently incorporated" shall mean an iron or steel product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public work.

(2) Any corporation in each contract for construction, reconstruction, alteration, repair, improvement or maintenance of a covered renewable energy system authorized pursuant to section sixty-six-u of this article, or a third party acting on behalf and for the benefit of the corporation, the "public work" for the purposes of this subdivision, shall

ensure that such contract shall contain a provision that the structural iron and structural steel used or supplied in the performance of the contract or any subcontract thereto and that is permanently incorporated into the public work, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of a structural iron or structural steel product all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives. For the purposes of this subdivision, "permanently incorporated" shall mean an iron or steel product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public work.

(b) The provisions of paragraph (a) of this subdivision shall not apply if the head of the department or agency or corporation under subparagraph one of such paragraph (a) constructing the public works, in his or her sole discretion, determines that the provisions would not be in the public interest, would result in unreasonable costs, or that obtaining such steel or iron in the United States would increase the cost of the contract by an unreasonable amount, or such iron or steel, including without limitation structural iron and structural steel cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality. The head of the department or agency constructing the public works shall include this determination in an advertisement or solicitation of a request for proposal, invitation for bid, or solicitation of proposal, or any other method provided for by law or regulation for soliciting a response from offerors intending to result in a contract pursuant to this subdivision. The provisions of paragraph (a) of this subdivision shall not apply for equipment purchased by a covered renewable energy system prior to the effective date of this [~~chapter~~] section.

(c) The head of the department or agency constructing the public works may, at his or her sole discretion, provide for a solicitation of a request for proposal, invitation for bid, or solicitation of proposal, or any other method provided for by law or regulation for soliciting a response from offerors intending to result in a contract pursuant to this paragraph involving a competitive process in which the evaluation of competing bids gives significant consideration in the evaluation process to the procurement of equipment and supplies from businesses located in New York state.

5. Whenever changes are proposed to any public procurement process involving the program described in subdivision two of this section, the commission shall make simultaneous recommendations to the temporary president of the senate and speaker of the assembly, regarding necessary changes to this section, if any, in meeting the goals outlined in the legislative findings and intent of [~~the chapter by which this section was enacted~~] part AA of chapter fifty-six of the laws of two thousand twenty-one.

§ 4. Subdivision 1 of section 224-d of the labor law, as separately amended by chapters 372 and 375 of the laws of 2022, is amended to read as follows:

1. For purposes of this section, a "covered renewable energy system" means (a) a renewable energy system, as such term is defined in section sixty-six-p of the public service law, with a capacity of one or more megawatts alternating current and which involves the procurement of

renewable energy credits by a public entity, or a third party acting on behalf and for the benefit of a public entity; or (b) any "thermal energy network" as defined by subdivision twenty-nine of section two of the public service law**; or (c) any "generation facility" as described in section sixty-six-u of the public service law**.

§ 5. No later than sixty days after the effective date of this act, the public service commission shall commence a proceeding necessary and appropriate to implement the provisions of section 66-u of the public service law.

§ 6. This act shall take effect immediately.