

Summary Overview of S.5844 / A.8510

The Power New York Act of 2011

The Governor introduced and both houses of the legislature this week passed legislation that would implement the “Power Act of 2011.”

The bill joins together two major energy related proposals: renewal of the Article X power plant siting law and an “on-bill” financing program (OBF) associated with the existing Green Jobs / Green NY program (GJ-GN). GJ-GN is overseen by NYSERDA and intended to provide New Yorkers with access to energy audits, installation services, and job training for careers in “green” industries. This new legislation provides low-interest financing through NYSERDA for energy retrofitting projects and allow consumers to repay the loans via their existing utility bill.

The OBF section of the legislation provides the following:

Utility payments supersede and will not be subordinate to payments for on bill financing loans. Underpayment of utility bills where OBF charges are also included would be allocated first to payments for electric or gas services and then to on-bill recovery charges.

Utilities are authorized to terminate service for non-payment of OBF loans pursuant to all rules and regulations under HEFPA.

Utilities are required to offer on-bill recovery charges within 300 days of the effective date of the section.

NYSERDA is required to handle all inquiries and customer complaints related to the GJ-GN OBF program and shall provide “a mechanism” to handle such inquiries.

The OBF section of the legislation would also require the Public Service Commission (PSC) to:

- within 45 days of the effective date, commence a proceeding to investigate the implementation, by “combination” gas and electric corporations of their ability to accommodate billing and collection services for on-bill financing charges in payment of obligations of customers for energy efficiency projects under the statute
- within 150 days of the effective date, make a determination establishing procedures for billing and collection of such charges; and
- within 300 days of the effective date, require participating utilities to offer such billing and collection services.

The program would initially be limited to no more than 0.5% of the customers of a given utility, on a first-come, first-serve basis, with the opportunity to increase the limit provided the PSC finds that the program is not causing “significant harm” to the company or its ratepayers or leading to a significant increase in arrears or utility service disconnections.

Schedules to be filed by the utilities would specify that billing and collection services must be available to all customers who meet criteria developed by NYSERDA and that a utility's responsibilities under GJ-GNY are limited to billing and collection of on-bill charges.

Utilities would be directed to use existing billing systems, "to the extent practicable," to collect on-bill charges. Funding available from NYSERDA for electronic data interchange improvements will be available immediately for all utilities up to \$500,000. A fee of \$100 per loan, plus a servicing fee of one percent of the loan amount (a one-time charge) will also be used to off-set data interchange expenses by utilities.

Pursuant to the loan program, the utility will need to recalculate budget billing plans or levelized payments to reflect "projected effects" of the installed energy efficiency measures.

Late charges on the OBF component of bills shall be collected by the utility and remitted to NYSERDA. However, when a property is sold or a customer terminates service at a property using OBF, NYSERDA will be responsible for collecting any existing arrears on the account.

NYSERDA will provide OBF GJ-GN program information for inclusion, at least once annually, in customer bills by the utility.

Loan limits stand at \$13,000 for residences and \$26,000 for businesses, at interest rates to be decided.

The Art. X Power Plant Siting language of the bill provides the following:

The bill pertains to applications for facilities with a nameplate capacity of twenty-five thousand kilowatts or more, and modified or repowered facilities (the expired law captured facilities with a threshold of 80MW and above).

The new law would provide a pre application process and hearings process, wherein an applicant must first submit an application to a seven member siting board, consisting of state agency officials and two ad hoc members that reside in the community and are appointed by the Legislature based on recommendations from local officials.

The application must contain, among other things, information related to the facility's environmental setting, potential environmental, health, and safety impacts, including a cumulative impact analysis of air quality based on projected emissions from the proposed facility, a comprehensive demographic, economic and physical description of the community within which the facility is to be located, an evaluation of reasonable alternative locations for the proposed facility, and measures to minimize significant environmental impacts.

The applicant must also provide funds to support intervenor-participation in the siting process both at the pre-application and hearings phases of the proceeding. The fee will range from \$30,000 to \$750,000 depending on the size of the proposed facility

After receipt of the application, the Board will commence a process to determine if the applicant should obtain a certificate to construct and operate the facility. The Board must first within 60-days determine if the application is complete, providing notice of completeness to the applicant, each municipality where the facility will be located, each member of the Board, and several State agencies and officials, including the Attorney General. Within a reasonable time thereafter, the Board must hold a public hearing to specify the issues and obtain stipulations as to matters not in dispute.

Owners of facilities that wish to modify or repower such facilities may thereafter participate in a six-month expedited process if their modified or repowered facilities meet stringent standards; e.g., if the future facility reduces its total net emissions based on a test that compares future potential emissions to annualized actual emissions over the last three years.

The new Article X would allow several parties to participate in the siting proceeding before a hearing examiner as of right, including the department of environmental conservation, department of economic development, department of health, a the municipality wherein the plant would be located, members of communities that live within the vicinity of the proposed facility site, and “non-profit organizations formed in whole or in part to promote conservation, the environment, or consumer interest, or that represent commercial or industrial groups.”

The Board will then make the final decision on an application upon the record of the presiding hearing examiner. The Board may not issue a certificate for the construction or operation of a major electric generating facility absent findings and determinations that, among other things, the facility will (i) beneficially add or substitute capacity in the State, (ii) minimize or avoid adverse environmental impacts, (iii) minimize or avoid adverse disproportionate impacts; and (iv) comply with all state and local laws and regulations unless such laws and regulations are found to be unreasonably burdensome with respect to the proposed project.

The bill also provides a process for rehearing of the Board decision and judicial review. Unless otherwise agreed to by the applicant, the Board must issue a decision within one year after the application has been deemed complete.

Photovoltaic Study

The bill also includes a section that will require a study to examine the need to increase generation from photovoltaic devices in New York.

The bill directs NYSERDA, in consultation with the PSC, to “conduct a study with respect to increasing generation from photovoltaic devices in New York, including, but not limited to” the following:

- Identify administrative and policy options that could be used in achieving goals of 2,500 MW of generation from photovoltaic devices in New York by 2020 and 5,000 MW by 2025.
- Conduct a targeted analysis of the per megawatt cost of achieving increased generation from photovoltaic devices and the costs of achieving the goals specified in paragraph a of this subdivision using each of the options identified in the analysis conducted pursuant to such paragraph.

- Conduct an analysis of the net economic and job creation benefits of achieving the goals specified in subdivision of this section using each of the options identified in the analysis conducted pursuant to such subdivision.
- Conduct an analysis of the environmental benefits of achieving the goals specified in paragraph a of this subdivision using each of the options identified in the analysis conducted pursuant to such paragraph.

Directs the study to be delivered to the Governor and Legislature by January 31, 2012.