

# PROGRAM BILL # 21

## GOVERNOR'S PROGRAM BILL 2011

### MEMORANDUM

An act to amend the public service law, the public authorities law, the real property law, the state finance law, and the environmental conservation law in relation to the Power NY Act of 2011.

#### Purpose of Bill:

Power NY would establish an on-bill recovery mechanism for the "Green Jobs/Green New York" program which was added by chapter 487 of the laws of 2009, reauthorize and modernize Article X of the Public Service Law, regarding siting of major electric generating facilities in a manner that enhances public participation and augments environmental justice, and require a study with respect to increasing generation from photovoltaic devices in New York.

#### Summary of Provisions:

Section 1 of the bill names the bill the Power NY Act of 2011.

Section 2 of the bill would amend the Public Service Law to exclude Green Jobs-Green New York (GJ-GNY) on-bill recovery charges from any determination of a participating utility's gross operating revenues.

Section 3 would amend the Public Service Law to clarify that the rights and responsibilities of residential ratepayers participating in the GJ-GNY on-bill recovery program shall be comparable to those with respect to the payment of other utility charges.

Section 4 would amend the Public Service Law to allow, but not require, gas corporations to establish on-bill recovery charges for customers participating in the GJ-GNY program.

Section 5 would require the Public Service Commission (PSC) to: (i) within 45 days of the effective date, commence a proceeding to investigate the implementation, by combination gas and electric corporations with annual revenues in excess of \$200,000,000, of billing and collection services for on-bill charges in payment of obligations of their customers for energy efficiency projects under GJ-GNY; (ii) within 150 days of the effective date, make a determination establishing procedures for billing and collection of such charges; and (iii) within 300 days of the effective date, require participating utilities to offer such billing and collection services. Additionally, utilities would be directed to use

existing billing systems, to the extent practicable, to collect on-bill charges and use funding available from the New York State Energy Research and Development Authority (NYSERDA) for electronic data interchange improvements that would streamline the collection of on-bill charges. The program would initially be limited to no more than 0.5% of the customers of a given utility, 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. 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 NYSEDA and that a utility's responsibilities under GJ-GNY are limited to billing and collection of on-bill charges. The schedules would apply the rights and responsibilities provided in Article Two of the Public Service Law to GJ-GNY participants (which would be limited to owners of property who pay the utility bills) with on-bill repayment plans and provide that on-bill charges shall survive changes in ownership. Nevertheless, arrears in on-bill recovery charges would remain the responsibility of the incurring customer and it would be NYSEDA's responsibility to collect such arrears. Underpayment of bills would be allocated first to payment for electric or gas services and then to on-bill recovery charges. Participation in GJ-GNY would not affect a gas and electric corporation customer's eligibility for any rebate or incentive offered by the utility or NYSEDA.

Section 6 would add a new section 1020-hh of the Public Authorities Law to require the Long Island Power Authority (LIPA) to establish a program to provide for the collection of on-bill charges.

Section 7 would amend section 1891 of the Public Authorities Law to clarify that improvements made under GJ-GNY are not considered major capital improvements or individual apartment improvements.

Section 7-a of the bill prohibits the comingling of funding provided under GJ-GNY for marketing and outreach with any other advocacy or policy promotion efforts.

Section 8 would amend section 1896 of the Public Authorities Law to authorize NYSEDA to establish an on-bill recovery program for the billing and collection of charges incurred through participation in the GJ-GNY program. NYSEDA would be required to establish standards for participation in the program and provide certain payments to the combination gas and electric corporations and LIPA to help defray their costs for developing and implementing the program. Maximum loan amounts under the program would be increased under certain circumstances. NYSEDA would be required to provide a notice to all customers receiving on-bill recovery stating the financial and legal obligations and risks entailed in such financings and to provide an opportunity to cancel within five days of signing the loan agreement. NYSEDA would be required to evaluate the cost effectiveness of the program on an ongoing basis. For each loan, NYSEDA would be required to file a mortgage that would be subordinate to any other existing or future mortgages and would be without right of foreclosure.

Section 9 of the bill would amend section 1897 of the Public Authorities Law to require NYSERDA to prescribe conditions for trainings under GJ-GNY, including standards for such trainings and the issuance of certificates of completion.

Section 10 would amend section 1899 of the Public Authorities Law to require NYSERDA to include information regarding participation in on-bill recovery programs in its annual GJ-GNY report to the governor and legislative leaders.

Section 11 would amend the Real Property Law to require that any person, firm, company, partnership or corporation offering to sell real property that is subject to the GJ-GNY on-bill charge shall provide a prospective purchaser written notice detailing the property's obligations to the program, the amount of the original charge, the payment schedule, remaining balance and description of energy efficiency service performed on the property. The notice must be provided by the seller prior to accepting a purchase offer.

Section 12 would reauthorize Public Service Law Article X to streamline the State decision-making process with respect to issuing a certificate for constructing and operating new major electric generating facilities having a nameplate capacity of twenty-five thousand kilowatts or more, and modified or repowered facilities. 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.

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.

Section 13 through 16 would amend Environmental Conservation Law §§ 8-0111(5)(b), 17-0823, 19-0305(2)(j), 49-0307(3)(e), to clarify that Public Service Law Article X has been reauthorized.

Section 17 would amend Public Authorities Law § 1014, as amended by chapter 446 of the laws of 1972, to make clear that Article X applies to the New York Power Authority.

Sections 18 and 19 would amend Public Authorities Law §§ 1020-c(8)(c), 1020-s, the latter as added by chapter 517 of the laws of 1986, to clarify that the siting and operation of a major steam electric generating facility owned or operated by the Green Island Power Authority will be subject to the requirements of Public Service Law Article X.

Section 20 would amend the State Finance Law by adding a new § 97-kkkk to establish an intervenor account for the purpose of paying for intervenors to participate in the Article X proceeding outlined above.

Section 21 would amend the Environmental Conservation Law by adding a new § 19-0312, which would expressly recognize that any major electric generating facility seeking a siting certificate must comply with all federal and state applicable emission requirements. The Department of Environmental Conservation is also expressly authorized to promulgate regulations targeting reductions in carbon dioxide.

Section 22 would require the New York State Energy Research and Development Authority, in consultation with the Department of Public Service, to conduct a study with respect to increasing generation from photovoltaic devices in New York.

Section 23 would ensure that if any aspect of the bill is adjudged by a court to be invalid, that judgment would not act to impair or invalidate the remainder of the bill.

Section 24 would make the act take effect immediately, and require the adoption within twelve months of all rules and regulations required to be promulgated pursuant to the requirements herein.

Existing Law:

The GJ-GNY Act, Article 9-A of the Public Authorities Law, directed NYSERDA to establish a revolving loan fund to finance qualified energy efficiency services and directed NYSERDA to use \$112 million in funds derived from the sale of carbon allowances pursuant to the Regional Greenhouse Gas Initiative to support the program. The most recent version of Public Service Law Article X expired on January 1, 2003.

Statement in Support:

The Power NY Act of 2011 ("Power NY") will encourage private investment in clean power plants, improve public participation in power plant siting decisions, reduce disproportionate environmental impacts in overly burdened communities, and expand opportunities for energy efficiency investments. In doing so, Power NY will expand affordable, clean and reliable energy supply, reduce demand for energy, improve our environment, strengthen the security and reliability of the state's energy systems, create jobs and foster economic growth.

Power NY includes the following three parts:

**1. *On Bill Recovery Program to Encourage Energy Efficiency***

The on-bill recovery mechanism is designed to allow customers to pay back loans for energy efficiency upgrades through a charge on their monthly utility bill. Loans will be provided under the program such that the monthly bill payments will be less than the energy cost savings associated with the efficiency upgrades.

On bill recovery would help overcome some of the common barriers to energy efficiency, including up-front capital cost and the complexity of taking out a loan from a third-party lender that requires payment through a separate invoice. On-bill recovery allows the charge to stay with the meter upon transfer of the property, thus allowing home and business owners to pay for the efficiency measures over the useful life of the equipment, enabling them to pay for the cost of the loan through reductions in their energy bills. By using the utilities' billing relationships with their customers, significantly more New Yorkers are expected to invest in energy efficiency measures.

Energy efficiency retrofits are a cost-effective, economically productive means of substantially reducing the energy used and wasted in buildings, the cost of operating buildings, and pollution and other hazards associated with producing, transmitting and expanding the availability of electricity and fuels. Energy waste is an economic drain on New York, as dollars spent on fuel only produces between 1/2 and 1/3 as much economic activity as dollars spent on construction or consumer goods, and New York has some of the

most energy-inefficient housing in the country and pays among the highest energy rates in the country.

Currently, small-scale on-bill financing programs in cities like Portland, Oregon and individual utilities like Midwest Energy in Kansas have reached hundreds of homeowners over the last several years; and some states, including New York, have provided partial on-bill financing programs reaching only small businesses, touching only one fuel, or requiring subsidies that make the programs unsustainable. All have served as crucial pilot programs.

Until now, no state has provided statewide access to on bill recovery for fuel-blind energy efficiency to residents. On bill recovery has the potential to trigger billions of dollars of investment in home and business energy retrofits, which is the scale of investment needed to revitalize the economy and address climate change.

On bill recovery will work in conjunction with GJ-GNY and New York's other energy efficiency programs, and will stimulate significant job creation in the energy retrofit industry.

## ***2. New Energy Siting Law***

An important element of increasing the availability of new power generation is enacting a simplified regulatory process to site new power plants. Power NY would reestablish the siting process under Public Service Law Article X, which expired on January 1, 2003. Under the expired siting law, facilities sized 80 MW or larger were handled by a multi-agency siting board that included public representatives. Currently, developers must deal with multiple levels of government, the jurisdiction of multiple agencies, and various protocols.

Since the expiration of Article X there have been various efforts to enact a power plant siting law. The new version of Article X reinvigorates and streamlines the licensing process for the siting of energy sources 25 megawatts or larger in a manner that will meet the energy and reliability needs of the state's energy consumers. The revised law would provide for enhanced community input in siting decisions and provide additional studies related to environmental justice. It would also provide for the collection of more information than the prior-version of Article X while maintaining the 12-month application review period that existed under the prior law. The law would require that any new facility meet all applicable air emission requirements, and provides the department of environmental conservation with explicit authority to adopt regulations to target reductions in carbon dioxide. A new 6-month application review is possible for modified or repowered facilities that reduce total annual emissions on-site.

Many parties would be entitled as of right to participate in the Article X site selection review process, including the applicant, several involved state agencies, the municipality where the facility is to be sited and other municipalities that may have an interest in the proceeding, any individual resident in such municipality, any not-for-profits

organizations, including those that represent commercial and industrial groups, that are devoted to a number of interests, including protection of the environment and human health, and promotion of consumer interests. The new law, moreover, would provide a significant funding mechanism for local interested parties residing in the community that may want to participate in the proceeding but lack sufficient funds.

In sum, the new Article X would provide greater certainty to the regulated community by providing a time-certain review process by a multi-agency board capable of granting all necessary permits, and would provide more meaningful input from those impacted by the siting of a facility .

### ***3. Increase the Use of Solar Energy in New York***

New York has the opportunity to become a leader in the emerging solar power industry. Other states, such as New Jersey, have established more aggressive goals than New York for the deployment of solar power. The cost of installing solar photovoltaic modules is declining. However, the State must develop a solar policy that is financially sound, especially for ratepayers. Therefore, Power NY would require the NYSERDA to prepare a study that analyzes ways to increase generation from photovoltaic devices in New York. The study will include an analysis of the net economic and job creation benefits of achieving further such development and the environmental benefits of achieving increased development and usage of photovoltaic cells.

#### Prior Legislative History:

This is a new proposal.

#### Budget Implications:

None.

#### Effective Date:

The bill would take effect immediately.