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Int. No. 803

By The Speaker (Council Member Vallone) and Council Members Spigner, Robles, Berman, Eisland, O'Donovan, Michels, Freed, Dear, Henry, Nelson, Reed, Linares and Fiala; also Council Members Eldridge, Espada, Fisher, Koslowitz, Leffler, Marshall, McCaffrey, Miller, Povman and Wooten

A Local Law to amend the administrative code of the city of New York, in relation to carbon dioxide emissions from electric generating units.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Findings and Intent. The Council of the City of New York finds that as a result of the growing economy and the use of new electrical devices the demand by New York City customers for electricity is outstripping the availability of our

power supply. According to several industry officials, without comparable increases in power generation to meet the demand, the City will face more brownouts and blackouts. Energy experts have recommended several measures to address the potential power crisis, including, the construction of new generating plants. No new power plants have been built in New York City since 1969.

These concerns are occurring at approximately the same time that the utility industry is being deregulated. In April 1996, the Federal Energy Regulatory Commission (“FERC”) ordered utilities that own, control or operate facilities used for transmitting electric power to let other companies buy and sell power over their distribution systems. In May 1996, the New York State Public Service Commission (“PSC”) issued an initial restructuring plan that permitted retail competition for the production and sale of electricity to begin in 1998. As a result, the production and sale of electricity is now open to competition and customers can decide from which company they will purchase electricity.

New York State, as a result of deregulation, is moving from a system in which one large public utility company - Consolidated Edison (“Con Ed”) - produced practically all of the electricity used in the City, to a system in which Con Edison buys power from electrical power generators and delivers energy to customers through its distribution system. In addition, Con Edison has been required by the PSC to sell most of its electric generating plants.

Deregulation of the industry and the high market demand for electricity by City consumers has resulted in a surge of companies applying for permits to build new generating plants within the City or expand the output of existing ones. The proposed construction of many new power plants within the City has prompted both local and citywide environmental concerns. Primarily, the concerns stem from the fact that many of the applicants seeking to run the proposed plants will continue to operate older less efficient, less environmentally sound plants in tandem with newer more efficient, less polluting plants. In addition, questions have been raised as to what the cumulative impact of emissions from the clustering of plants might be. The concerns surround the amount of harmful emissions that new power plants would emit, in particular, the impact of emissions such as carbon dioxide (“CO<sub>2</sub>”), responsible for such environmental hazards as global warming.

In relation to these issues, the companies purchasing power plants have made numerous assurances that new technologies will be utilized for new power plants that will not only increase overall efficiency but will also reduce harmful emissions. Despite these assurances, many of the companies intend to continue to utilize older, less efficient polluting generators.

The Council recognizes the need for energy demands, but at the same time, the City must first be assured that a strategy is in place that takes into account the improvement of the environment as well as energy needs. Acting in its capacity as the City’s legislative branch and authorized under both the Municipal Home Rule Law and the Charter, which confers broad police powers upon local governments relating to protection, order, conduct, safety, health and well-being of persons and property, the Council adopts this legislation.

The purpose of this legislation is to encourage owners of existing power plants, as well as newcomers to the New York City electric power industry, to maximize efficiency by incorporating technological advances in energy production that increase electricity generation but do not require an increase in fossil fuel consumption, and, therefore, do not increase carbon dioxide emissions. The Council seeks to

accomplish these goals through the establishment of a rate of allowable carbon dioxide emissions per megawatt-hour of generated electricity for all power plants located in the City. Over time, CO<sub>2</sub> emission rates will decrease, as more efficient power plants are installed and older power plants incorporate more efficient processes for generating greater levels of electricity without increasing the use of fossil fuels. The end result will be a cleaner, healthier environment for the City's citizens, without requiring a sacrifice in energy demands.

Accordingly, the Council finds that the full benefits of electric competition will not be realized if CO<sub>2</sub> is not regulated, and some competitors in the electricity marketplace enjoy an economic advantage as a result of jeopardizing the City's environment by unregulated carbon dioxide emissions produced by electric generating facilities. This legislation will ensure that this new marketplace for electricity will not come at the cost of public health, air, land and water quality.

§2. Title 24 of the Administrative Code of the City of New York is hereby amended by adding a new section 24-141.1, to read as follows:

Section 24-141.1 a. For purposes of this section only, the following terms shall have the following meanings:

(1) "Electric generating unit" means any fossil fuel fired combustion unit located in the City of New York with a capacity of more than 25 megawatts that serves as a generator that produces electricity for use or sale.

b. The provisions of this section shall apply to every electric generating unit.

c. Notwithstanding any other provision of law, the mayor shall designate the appropriate city agency to implement reductions in emissions of carbon dioxide in accordance with the provisions of this section. Such agency shall promulgate rules, including, but not limited to, a quarterly reporting requirement, no later than October 1, 2001, in relation to reducing such emissions of carbon dioxide. The agency designated by the mayor shall require all electric generating units to comply with an emission standard expressed in pounds of carbon dioxide emitted per megawatt-hour of electricity generated.

b. No later than March 1, 2002, the designated agency shall set an emissions rate for carbon dioxide emissions for all electric generating units at a level that is no greater than the total carbon dioxide emissions for those generating units during 1999, divided by the total amount of electricity generated by those generating units in that year. On March 1, 2002 and every year thereafter, the allowable citywide emissions rate for carbon dioxide shall be reduced by one percent for each one hundred megawatts of electric generating capacity installed within the city of New York during the previous year until such time as the allowable emissions rate for carbon dioxide has been reduced by thirty percent.

b. The designated agency may establish a carbon dioxide emissions credit trading mechanism and allow the operators of all electric generating units subject to this section to achieve compliance through the purchase of emission credits below the requirements set forth in this section.

b. The emission standards for carbon dioxide required by this section shall not

be construed to supersede more stringent emission standards, limitations and practices that are applicable to electric generating units on the effective date of this section or may become applicable after such effective date.

b. Operators of electric generating units that fail to meet their obligations pursuant to the requirements of this section shall be fined an amount equal to five dollars for each ton of carbon dioxide emissions in the first year above the requirements set forth in this section. An additional five dollars for each ton of carbon dioxide emissions above the requirements set forth in this section shall be imposed for each year thereafter. Such amounts shall be collected by the appropriate agency designated by the mayor. The agency shall submit an annual report to the mayor, the council and the comptroller regarding the amount of fines collected pursuant to this subdivision.

b. If any section, subdivision, sentence, clause, phrase or other portion of this local law is, for any reason, declared invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§3. This local shall take effect immediately.

LS #3427