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Int. No. 148

By Council Members Vallone, Jr., Nelson, Reed, Gennaro, Comrie, Gerson, Reyna, Sanders Jr., Weprin, Avella, Koppell, Yassky, Quinn, Addabbo Jr., Seabrook, Katz, Brewer, Gentile, Moskowitz, Liu, Gallagher, Lanza, Oddo, Gioia, Sears, McMahon, Martinez, Foster, Perkins, Recchia Jr., Monserrate, Fidler, Clarke, DeBlasio, Baez, James, Palma, Jackson, Rivera, Barron and The Public Advocate (Ms. Gotbaum)

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 exceeding the amount of supply needed for reliability. According to several studies, without comparable increases in power generation to meet the demand and increased emphasis on energy efficiency, the City of New York could face brownouts and blackouts as well as price spikes. Energy experts have recommended several measures to address the potential power crisis, including, the construction of new electric generating plants.

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 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 - 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 own electric generating plants.

Deregulation of the industry and the growing 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 (“CO₂”), responsible for such environmental hazards as global warming.

In relation to these issues, the companies proposing increased generation 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 more energy to meet rising 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 electric generating facilities, as well as newcomers to the New York City electric power industry, to maximize efficiency by incorporating technological advances in energy production that increase electric 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 equivalent megawatt-hour of generated electricity for electric generating units located in the City. Over time, CO₂ emission rates will decrease, as more efficient power facilities are installed and older power facilities 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, while at the same time meet the City’s energy needs.

Accordingly, the Council finds that the full benefits of electric competition will not be realized if CO₂ 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. Chapter one of title 24 of the administrative code of the city of New York is amended by adding thereto a new section 24-141.1 to read as follows:

§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

or a combination of units at a single facility located within the city of New York with a single or aggregate nameplate capacity of more than twenty-five megawatts which produces electricity for sale, irrespective of the permitted capacity of such facility.

(2) "Equivalent megawatt-hour" means the sum of one hundred percent of the electricity produced by an electric generating unit and one-half of the net useful thermal energy output of that electric generating unit.

(3) "Net useful thermal energy output" means the net thermal energy output measured in millions of British thermal units divided by the quotient of 3.413 million British thermal units divided by the number of megawatt-hours produced.

b. Notwithstanding any other provision of law, the department of environmental protection shall implement reductions in emissions of carbon dioxide in accordance with the provisions of this subdivision. Within one year after the effective date of this section, the department of environmental protection shall promulgate rules, for reducing emissions of carbon dioxide, including, but not limited to, a quarterly reporting requirement.

c. No later than eighteen months after the effective date of this subdivision, the department of environmental protection shall set an emission rate for carbon dioxide emissions for electric generating units expressed in pounds of carbon dioxide emitted per equivalent megawatt-hour that is no greater than the total carbon dioxide emissions of every electric generating unit operating during the years 1997, 1998 and 1999, divided by the total amount of equivalent megawatt-hours generated by those electric generating units in those years. Every twelve months thereafter, the allowable citywide emissions rate for carbon dioxide for all electric generating units shall be reduced by one percent for every one hundred megawatts of electric generating capacity installed within the city of New York during the previous twelve-month period until such time as the allowable emissions rate for carbon dioxide has been reduced by twenty percent. Any new capacity with an emission rate above the required emission rate shall be excluded for the purpose of setting a lower emission rate. However, all new electric generating capacity shall be required to meet the lower emission rate.

d. The department of environmental protection may establish a carbon dioxide emission credit trading mechanism and allow the operator of an electric generating unit to achieve compliance through the purchase of carbon dioxide emission credits,

including, but not limited to, credits for investments in energy efficiency, solar, wind, fuel cells and other strategies that reduce carbon dioxide emissions in New York city, below the requirements set forth in this section.

e. The emission standards for carbon dioxide required by this section are not intended to and shall not be construed to supersede more stringent emission standards, limitations or practices that are applicable to electric generating units on the effective date of this section or may become applicable after such effective date.

f. Operators of electric generating units that fail to meet their obligations pursuant to the requirements of this section shall be liable for a civil penalty in an amount equal to three dollars for each ton of carbon dioxide emissions in the first year above the requirements set forth in this section. An additional civil penalty of one dollar for each ton of carbon dioxide emissions above the requirements set forth in this section shall be imposed for each consecutive year thereafter that the electric generating unit fails to comply with the requirements of this section.

g. Where an electric generating unit has been operated in violation of this section the department of environmental protection may commence a proceeding before the environmental control board for the imposition of a civil penalty provided for in subdivision f of this section by issuance of a notice of violation to the operator of such electric generating unit or the corporation counsel may commence an action or proceeding before a court of competent jurisdiction for the imposition of such civil penalty. The corporation counsel may, in addition, commence an action or proceeding before a court of competent jurisdiction for injunctive relief to prohibit such violation.

h. The provisions of this section shall not apply to any electric generating unit when the rates for the sale of electricity produced by such electric generating unit is subject to the jurisdiction of the New York state public service commission.

i. The department of environmental protection shall submit a report to the mayor, the council and the comptroller, simultaneous with the issuance by the mayor of the proposed budget, listing each person or entity to whom any violation of this section was issued during the prior year, the details of such violation, the type of action or proceeding brought to adjudicate such violation and the outcome of such action or proceeding.

j. 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 law shall take effect immediately.

