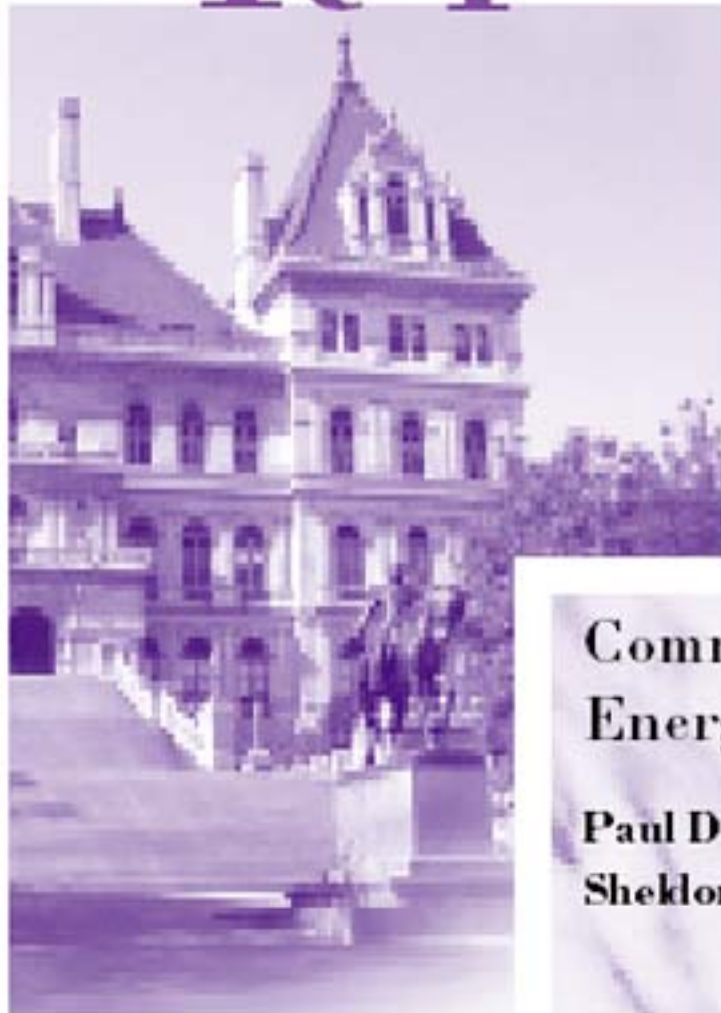


2005

New York State Assembly

Annual Report



Committee on Energy

Paul D. Tonko – Chairman

Shekton Silver – Speaker

**2005
Annual Report**

**New York State Assembly
Standing Committee on Energy**

**Paul D. Tonko
Chairman**

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N. Nick Perry
Sam Hoyt
Felix Ortiz
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I. INTRODUCTION

The Assembly Energy Committee, now in its 24th year, has jurisdiction over legislation relating to energy availability and sources, policy and planning, conservation of energy, and electric and gas rate-making in New York State. The Committee considers legislation which amends the Energy Law, the Public Service Law, Public Authorities Law, and the Economic Development Law. The Committee works closely with the Assembly Committee on Corporations, Authorities and Commissions, which considers legislation concerning the structure and operations of the Power Authority of the State of New York (PASNY), the Public Service Commission (PSC), the Energy Research and Development Authority (ERDA), and the Long Island Power Authority (LIPA). The Committee also works with other State agencies including the Department of Economic Development (DED), the Department of Environmental Conservation (DEC), and the Department of Transportation (DOT).

In 2005, 87 bills were referenced to the Committee and 28 bills were reported from Committee. The Committee monitored the passage of 9 of these bills in the Assembly. Four became law. This report outlines the legislation which incorporates many of the Assembly's proposals developed by the Committee to address the challenges facing the State regarding the State's energy policy during the 2005 legislative session.

II. MAJOR ISSUES FOR 2005

A. POWER FOR JOBS

(A.8960, Tonko: Chapter 313 of the Laws of 2005)

Program Background

The Assembly majority proposed the Power for Jobs program in May of 1996. In 1997, after a joint conference committee, the Power for Jobs program was enacted into law as Chapter 316 of the Laws of 1997. The original legislation provided 400 megawatts of low-cost power to businesses and to not-for-profit corporations for the creation and retention of jobs with the State.

The program was amended in July 1998 (Chapter 317 of the Laws of 1998) in order to provide an additional 50 megawatts of power for a total of 450 megawatts of power under the program, and in order to accelerate the timetable for the allocation of power. In May 2000, the program was amended (Chapter 63 of the Laws of 2000) in order to provide an allocation of 300 megawatts of power to be available through 2005 for companies' contracts under Phase One which were due to expire in March of 2001. On July 30, 2002, Phases Two and Three allocations of 183 megawatts of power were extended to 2005 (Chapter 226 of the Laws of 2002).

Legislative Session 2005

This five-part legislation extended several programs facing statutory sunset, and made necessary changes to allow the Power Authority of the State of New York (PASNY) to continue providing low-cost power to businesses for economic development purposes. Elements of the legislation include:

- **Power for Jobs.** The Power for Jobs program was extended for all current recipients for an additional year to end December 31, 2006. Also, the legislation creates more flexibility by allowing customers to receive partial benefits in proportion to their compliance with job retention and creation commitments.
- **Unallocated Hydropower.** Up to 70 MW of unallocated power from the Niagara Power Project and up to 20 MW of currently unallocated power from the St. Lawrence-FDR Project is authorized to be used for job retention and creation in other parts of the State. In addition, up to 38.6 MW of power from the St. Lawrence-FDR Project is authorized to be allocated for statewide job retention purposes if that power is voluntarily given up by businesses in the future. All such allocations could be recaptured by the respective regions.
- **Economic Development Power.** The legislation allows PASNY to continue serving Economic Development Power, High Load Factor power, and Municipal Distribution Agency power customers who received low-cost power from the Fitzpatrick Nuclear Plant, which was sold in 2000.

- **Replacement Power.** Extends the Replacement Power Program to provide up to 445 megawatts (MW) of hydropower from the Niagara Power Project in Lewiston to serve industry within a 30-mile radius of the project in Western New York. The Program, first established under the project's federal license agreement in 1957, was scheduled to expire at the end of 2005.
- **Preservation Power.** Creates a new Preservation Power Program, which will govern the future allocation of up to 490 MW of power from the St. Lawrence-FDR Power Project in Massena to serve businesses in Jefferson, St. Lawrence and Franklin counties.
- **World Trade Center Economic Recovery Power.** Authorizes PASNY to provide additional three-year contract extensions to businesses in Lower Manhattan served by World Trade Center Economic Recovery Power Program and allocated to downtown businesses that were impacted by the September 11 terrorist attacks. The legislation ensures that allocations are made to companies located in the Liberty and Resurgence Zones.

B. UNDERGROUND ENERGY INFRASTRUCTURE SAFETY

(A.8550, Tonko: Chapter 707 of the Laws of 2005)

The one-call notification system established by the State has made significant progress in reducing the number of accidents involving underground utility facilities by providing contractors and others who have occasion to do underground excavation with a single place where they can go to ascertain the location of all underground facilities in the area where they plan to dig. This legislation extends provisions relating to the underground facilities safety training account to provide training and education to operators and excavators on the requirements and procedures for the protection of underground facilities.

C. APPLIANCE ENERGY EFFICIENCY STANDARDS

(A.8757B, Tonko: Chapter 431 of the Laws of 2005)

This legislation directs the Secretary of State, in consultation with the President of the New York State Energy Research and Development Authority, to promulgate energy efficiency performance standards for certain new appliances and equipment for which standards have not been prescribed by the federal government.

In addition, this legislation directs the Secretary, in consultation with the President, to regulate the amount of electricity that is consumed by products when they are turned off, but use electricity in a stand-by mode. When fully implemented, this effort to improve the efficiency of consumer electronic products will result in significant reductions in electric energy demand.

D. AGRICULTURAL WASTE ENERGY INITIATIVE

(A.8837, Tonko: Chapter 569 of the Laws of 2005)

The Cooperative Corporations Law, which governs the creation of general and agricultural cooperatives, did not contain provisions concerning the formation of cooperatives for the purposes of the capture of methane and other gases for generation and use or sale of energy from agricultural waste products.

This legislation encourages alternative energy technologies and environmentally-sound agricultural waste management by agricultural producers through the formation of cooperatives to capture methane and other gases for generation and use or sale of energy from agricultural waste products.

E. UTILITY RELIABILITY STANDARDS

(A.5811, Tonko: Passed Assembly)

This legislation would require the Public Service Commission to establish mandatory reliability standards for electric generating, transmission and distribution systems. The new standards would minimize electrical service interruptions to customers and require appropriate planning and operating standards to ensure reliable operation of New York State electric power systems. All New York public authorities, electric utility companies, and municipal utilities would be required to comply with these standards.

F. RETAIL ELECTRICITY MARKET ANALYSIS

(A.7429, Tonko: Passed Assembly)

This legislation would require the Public Service Commission to study the effects of competition on retail electricity markets, looking at the initial criteria of lowered rates and expanded customer choice. Such study would be reported to the legislature within six months of the effective date of this act.

G. REAUTHORIZING POWER PLANT SITING, STATE ENERGY PLANNING AND UTILITY PORTFOLIO MANAGEMENT

(A.5865A, Tonko: Reported to Third Reading)

1. Article X of the Public Service Law

Article X of the New York State Public Service Law expired on January 1, 2003. That law set forth a review process of applications to construct and operate major electric generating facilities with a generating capacity of 80 megawatts or more. Article X approval resulted in the issuance of a Certificate of Environmental Compatibility and Public Need (Certificate), which was required before the construction of such a facility.

The Assembly Power Plant Siting reform legislation would continue to designate the Department of Environmental Conservation as the entity responsible for issuing required

environmental permits consistent with the designation by the United States Environmental Protection Agency.

This legislation would provide for more community input in siting decisions, additional protections for health, and require state agencies to conduct environmental and health related studies. Such changes are designed to collect more information while maintaining the streamlined 12-month application review period of existing law. Other provisions would:

- improve local community representation on each siting board by requiring that local appointees be named by locally elected officials;
- require analyses of health impacts, cumulative impacts of emissions in the affected area and review of such studies by the siting board to protect the health of the local community;
- strengthen the community outreach process by requiring the use of multiple languages, as is appropriate, as well as the use of community newspapers for notice requirements;
- increase the amount of intervenor funding from a maximum of \$400,000 to \$625,000; make 25% of the funding available for the pre-application process and allow intervenor funds to be available for legal fees;
- lower the threshold for the size of power plants subject to Article X requirements to 30 megawatts from 80 megawatts and include multiple plants that are separately sited but located within the same community;
- require the applicant to provide a profile of air and water emissions including micro particulates (2.5 microns or smaller);
- require the Energy Research and Development Authority to examine how a proposed facility fits into the current energy plan and conduct a cost analysis of the proposed facility in comparison to alternative sources of energy, such as renewable fuels or energy efficiency measures;
- require the Department of State to conduct an analysis of the proposal in light of state coastal zone management laws and policies and require the Office of Parks, Recreation and Historic Preservation to conduct an analysis of impacts on parks and open lands;
- require the submission of a security plan; which is to be prepared in consultation with the State Emergency Management Office;
- prohibit the Power Authority of the State of New York and the Long Island Power Authority from assuming the lead role in assessing the environmental and health impacts of facilities that they build themselves or cause to be built;
- require enhanced emission reduction requirements for acid rain pollutants, and regulate power plant emissions of nitrogen oxide, sulfur dioxide, carbon dioxide, and mercury; and,
- extend the law until December 31, 2017.

2. State Energy Planning

Article 6 of the Energy Law, requiring the creation of a State Energy Plan, expired on January 1, 2003. The State Energy Plan was used to provide a 20 year outlook for long-term planning of both projected energy demand as well as recommendations for the provision of the State's energy needs through investments in conservation, transmission, new generation, and new technology.

This legislation would reauthorize Article 6 of the Energy Law, which would require comprehensive studies of the State's energy needs, analyses of the emerging regional energy markets in the State and establish the State Energy Planning Board. The Board would consist of: the chair of the Public Service Commission; commissioners of the Department of Environment Conservation, the Department of Economic Development, and the Department of Transportation; the director of the State Emergency Management Office; and the chair of the New York Energy Research and Development Authority.

The Board would be directed to adopt and update a State Energy Plan and, at least every four years, conduct a reliability study of the State's electrical transmission and distribution system. The State Energy Plan would:

- examine electricity and natural gas markets to identify, on a statewide basis, where additional supply needs are most critical while examining the downstate and upstate regions separately;
- examine the least-cost means of meeting the State's energy needs, avoiding reliance on construction of large, central-station power plants and emphasizing replacing old, inefficient polluting facilities;
- analyze the security of the State's energy systems, and the fairness of the locations of facilities; and,
- examine and identify alternative locations for the siting of new power plants.

Finally, the bill would require the Power Authority of the State of New York and the Long Island Power Authority to participate in the planning process by completing annual energy plans, which would examine the authorities' strategic, operating and capital plans.

3. Utility Portfolio Management

This legislation would reauthorize and amend section 66-i of the Public Service Law with respect to energy portfolio management services for utility customers and place new requirements on utility companies to protect their customers from increasing volatility in energy prices.

It would require electric utilities to consider all reasonably available resources to provide "portfolio management" services to their customers. Such portfolio management services would include mechanisms such as long and short-term energy contracts, energy efficiency, distributed generation and renewable energy technology, which would reduce the volatility of wholesale electrical prices and minimize customer bills.

Utility companies would, within six months of the passage of this law, be required to submit drafts outlining proposed portfolio service management plans to the Public Service Commission. After public comment and participation to determine if the plans met the requirements described in this legislation. The Commission would approve the plan if it met the established requirements. The Commission would then establish a set of performance-based rewards and penalties to be applied to utility companies in response to the efficacy of their plans.

H. FACILITIES OF REFUGE

(A.5812 Tonko: Reported to Third Reading)

This legislation would establish guidelines for the creation of facilities of refuge throughout the State in order to provide adequate protection and relief in times of emergency. Every county and the City of New York would be directed to coordinate and cooperate with the State Emergency Management Office and the Disaster Preparedness Commission to establish facilities of refuge, which would be included in all local disaster preparedness plans. Such facilities of refuge would be required to install cogeneration technology on their premise in order to have the ability to generate on-site electricity and thermal energy.

The legislation would direct the Power Authority of the State of New York and the Long Island Power Authority to each provide at least \$10 million annually in financial assistance for a five year period for the installation of cogeneration technologies.

Facilities of refuge would be exempt from tariffs, exit fees or payment of lost revenues related to the installation and operation of cogeneration equipment. Furthermore, to the extent such facilities would require interconnection with the local electric utility system, any standby rates established by an electric corporation would be required to take into account the actual costs and benefits of the distributed generation resource. Any interconnection rates collected by the electric corporations would be required to be reasonable.

I. ENERGY CONSUMER PROTECTIONS

1. Rural Co-op Switch – A.650, Parment: Ordered to Third Reading

New York rural electric cooperatives were created in 1941 to provide electric service in areas not served by private power companies. Each cooperative is a non-profit electric utility owned by the customers it serves and governed by a board of directors elected by the cooperative membership.

This legislation would authorize a rural electric cooperative to provide electrical service within the service territory where it holds a franchise by mutual agreement with the existing electric service supplier. In effect, this would allow rural residents currently served by other utilities to join rural electric cooperatives.

2. Restricting Automatic Rate Adjustments – A.2718, Tonko: Ordered to Third Reading

Gas and electric utilities can pass higher costs on to ratepayers through automatic adjustments such as "market supply charges" or fuel adjustment charges. This legislation would require the PSC to examine the effect of higher prices that are passed on to consumers through these automatic adjustments on customer bills, and would ensure that utilities are acting appropriately to provide just and reasonable rates to retail consumers. Utilities would be limited to one automatic rate adjustment in any six-month period, and annualized increases would be limited to the lesser of \$300,000 or 2.5% of the gas or electric corporation's revenues during a 12-month period.

3. Gas and Electric Service Price List – A.7426, Tonko: Ordered to Third Reading

This legislation would amend the Public Service Law to require the PSC, in its role as the overseer of energy markets in the State, to compile and provide a comprehensive and timely list of suppliers so that consumers have accurate and complete information in order to make educated choices. Further, this bill would require all companies offering services to file their terms with the PSC.

4. Pre-paid Energy Service Customer Protection – A.7427, Tonko: Ordered to Third Reading

This legislation would require energy companies to maintain financial instruments or other assurances to guarantee repayment to the customer of all prepaid amounts in the event the company cannot meet its obligations under the service contract.

5. Protection from Energy Service “Slamming” – A.7428, Tonko: Ordered to Third Reading

The deregulation of the electricity markets in New York is designed to allow new energy service companies to provide retail commodity services to residential electric utility customers. Some of these new market entrants may attempt to “slam” customers, which refers to switching the services of customer from one company to another either without the express consent of the customer or through dishonest means.

This legislation would prohibit an energy company from switching a residential customer account to another energy service company without the express consent of the customer. An energy company could not change the terms and conditions of service without the express consent of the customer except for changes resulting from tariff changes approved by the PSC which are applicable to all customers of the same service class. Failure to respond to bill inserts or other notice would not constitute consent.

III. PUBLIC HEARINGS

The Committee held seven public hearings in 2005. A summary of those hearings follows.

A. LOW COST POWER PROGRAMS

New York State administers several subsidized power programs in order to provide incentives to businesses and not-for-profits to create and retain jobs. In 2005, the Committee in conjunction with the Standing Committee on Corporations, Authorities and Commissions, held a series of hearings on the various program and electric rate discount opportunities for various customers in all areas of the State. Hearings were held in Albany on March 4, March 16 and May 2; and a hearing was held in Syracuse on October 12 and in Binghamton on October 20. These hearings examined the efficacy of low-cost electric programs for large industrial customers, as well as two statewide low-cost power programs that were scheduled to expire.

B. HOME ENERGY ASSISTANCE PROGRAM

On September 14, 2005, the Committee, in conjunction with the Standing Committee on Consumer Affairs and Protection, held a hearing in Albany to investigate the dramatic increase in the price of gasoline, home heating oil, natural gas and other fuels, and to explore effective short-term and long-term solutions to alleviate this crisis.

The hearing also examined several related issues, including the extent to which gouging has impacted gasoline prices, the need for an increase in Home Energy Assistance Program (HEAP) funds for low-income and senior citizens, the effects of Hurricane Katrina on the availability of both transportation fuels and heating fuels, the fiscal impact that escalating fuel prices have on all levels of government, including school districts, businesses and not-for-profits, and the effect of federal, state and local taxes on the price of fuels of all types.

C. RENEWABLE PORTFOLIO STANDARD

On December 7, 2005, the Committee, in conjunction with the Subcommittee on Renewable Energy, held a hearing in Albany to examine policies and implementation of the Renewable Portfolio Standard (RPS), a program created to develop renewable energy in New York State.

The RPS was created by a Public Service Commission Order in 2004. Pursuant to the Order, the RPS is funded through a surcharge on electric utility customer bills. The Order designates the New York State Energy Research and Development Authority as the administrator of the program and all associated funds.

Testimony at the hearing examined a range of subjects including the unique characteristics of the New York RPS; the implementation process of the RPS; the impact on electric consumer bills; the methodology used to determine costs of the program; the capability of the RPS to reduce fossil fuel costs in New York; the coordination of the RPS with other

energy programs; and the success of other state RPS programs resulting in the construction of renewable energy sources and reduced dependency on fossil fuel sources of electricity.

IV. OUTLOOK FOR 2006

As the Committee develops an agenda for 2006, it will continue its in-depth review of State energy policy and encourage State agencies to develop an integrated approach in planning for the State's energy needs.

The Committee will also continue to promote ways the State can diversify its energy portfolio in a manner that ensures that energy remains both safe and available for residents and businesses at reasonable rates, while maintaining the highest levels of reliability.

APPENDIX A

2005 SUMMARY SHEET

**Summary of Action on All Bills Referred to the Committee on
ENERGY**

<u>Final Disposition</u>	<u>Assembly Bills</u>	<u>Senate Bills</u>	<u>Total</u>
TOTAL Bills Referred to Committee	87	6	93
<u>Bills Reported With or Without Amendment</u>	28	0	28
To Floor	7	0	7
To Ways and Means	14	0	14
To Codes	6	0	6
To Rules	1	0	1
Bills Having Enacting Clause Stricken	0	0	0
Bills Never Reported, Remained in Committee	59	6	65
TOTAL NUMBER OF COMMITTEE MEETINGS HELD		5	

APPENDIX B

Bills Passed by Both Houses

<u>Governor's Action</u>	<u>Bill Number</u>	<u>Description</u>
Chapter 707	A.8550 (Tonko)	Extends provisions of law relating to the underground facilities safety training account from October 1, 2005 until October 1, 2010.
Chapter 431	A.8757-B (Rules-Tonko)	Enacts the appliance and equipment energy efficiency standards act of 2005.
Chapter 569	A.8837 (Rules, Tonko)	Permits formation of a general cooperative corporation for the purpose of the capture of methane and other gases for the generation and use or sale of energy.
Chapter 313	A.8960 (Rules, Tonko)	Relates to Replacement Power, Preservation Power, the Power for Jobs program and the Economic Development Power Allocation Board.

APPENDIX C

Bills Passed by the Assembly

<u>Bill Number</u>	<u>Sponsor</u>	<u>Description</u>
A.1847	Grannis	Relates to the powers and duties of N.Y. State Energy Research and Development Authority (NYSERDA) with respect to collection of information regarding energy efficient outdoor lighting.
A.2717	Tonko	Requires alternative fuels to be available along the thruway.
A.2720	Tonko	Makes provisions regarding electric service for farmers.
A.5811	Tonko	Relates to electric utility system reliability standards.
A.7429	Tonko	Directs the Public Service Commission to issue a report to the legislature regarding competition in residential retail energy markets served by public utilities in the State.
A.8550	Tonko	Extends provisions of law relating to the underground facilities safety training account from October 1, 2005 until October 1, 2010.
A.8757B	Tonko	Enacts the appliance and equipment energy efficiency standards act of 2005.
A.8837	Tonko	Permits formation of a general cooperative corporation for the purpose of the capture of methane and other gases for the generation and use or sale of energy.
A.8960	Tonko	Relates to Replacement Power, Preservation Power, the Power for Jobs program and the Economic Development Power Allocation Board.