

FAST CHARGERS AND SLOW PROGRESS: THE STATE OF THE NEW YORK ELECTRIC VEHICLE MARKET AND WHAT COMES NEXT

Hodgson Russ Renewable Energy Alert
October 31, 2019

Senator Schumer turned heads recently with his plan to put nearly \$400 billion into what amounts to a “cash-for-clunkers” program to spur electric vehicle (EV) purchases, \$45 billion into EV charging infrastructure and \$17 billion into incentives for manufacturers to build the EV’s of the future here in the U.S.A. But even without a 2021 administration in Washington D.C. that might move forward with such an ambitious package, state electricity systems - and especially New York State’s - still need significant reform to accommodate this growing industry.

Here in Senator Schumer’s home state the EV market – and in particular the charging infrastructure sector – has been even slower to take hold than in other states with progressive energy policies. But a long-awaited “white paper” due out soon from New York State’s Department of Public Service may set the playing field for a 2020 reboot of the fast charger market, in particular, which is essential for the uptake in EVs needed for the state to reach its ambitious goals. And while New York’s recently passed climate bill is silent on express directives or authorizations that would launch near-term private investment, the bill does lay out a longer term blueprint for major reform that would spur the state’s EV economy. EV market participants, consumers, potential host sites, dealerships and others should be on the lookout for these next steps to ensure their voices are heard as the state forms the economics of the next phase of New York’s EV infrastructure buildout and sets the stage for long-term systemic improvements.

Current State of New York's Electric Vehicle Infrastructure and Market

Fast chargers provide DC current directly to an EV’s battery (thus their acronym DCFC), bypassing the usual need to convert the AC current from the plug. Using DCFCs, many vehicles are capable of getting an 80% charge in under an hour as opposed to the 4-8 hours needed when using a “Level 2” charger, which can be plugged into a normal home or garage outlet. DC fast charging is necessary for long-distance driving, and for useful installations at existing gas stations, rest areas, convenience stores and similar locations. But deployment of fast chargers in New York is only about *six percent* of California’s. New York trails behind even Maryland and Massachusetts, each of which has fewer than half as many vehicles on the road. More broadly, New York ranks a lowly 30th nation-wide in electric vehicle charging

Attorneys

Joseph Endres
Michael Hecker
Elizabeth Holden
Charles Malcomb
Paul Meosky
Daniel Spitzer
Jeffrey Stravino
Brienne Szopinski
Sujata Yalamanchili
John Zak
Henry Zomerfeld

FAST CHARGERS AND SLOW PROGRESS: THE STATE OF THE NEW YORK ELECTRIC VEHICLE MARKET AND WHAT COMES NEXT

stations per capita.

New York's "Charge Ready" \$4,000 rebate program for charging installations, together with the "Drive Clean" \$2,000 rebate program for EV vehicle sales, have been successful by their own terms but have not yet spurred an active, self-sufficient market for fast charging infrastructure. The state's \$127 million in Volkswagen settlement funds will be spent on the low-hanging fruit of replacing diesel trucks and buses with electric vehicles, and the \$250 million that the New York Power Authority (NYPA) has committed to its "EVolve NY" initiative, coupled with expanded authority for NYPA in the 2019 state budget law to develop and own electric vehicle infrastructure, provides a pathway for NYPA to capitalize upon the most advantageous sites and market opportunities. These efforts can each be important steps forward, but it is as yet unclear whether they will catalyze private sector spending at the scale and speed needed to increase EV adoption in a significant way.

New York State's EV Policy Framework and Path Forward

New York State's ambitious Climate Leadership and Community Protection Act (CLCPA) sets bold mandates for deployment of a wide range of renewable energy technology: nine gigawatts (GW) of offshore wind by 2035, enough to power nearly one-third of New York's electricity needs; six GWs of distributed solar and three GWs of energy storage. And the law authorized toothy, road-mapping exercises and regulatory proceedings to achieve the CLCPA's overarching goal of reducing greenhouse gas emissions economy-wide by 85% by 2050.

But the CLCPA is largely silent with respect to the transportation sector, which accounts for nearly one-third of New York State's greenhouse gas emissions, the trend for which has been stubbornly upward whereas the electricity generation sector, for example, has been getting cleaner. Notably, a provision that had been in Governor Cuomo's "Climate Leadership Act," proposed in January 2019 with his 2019 budget, that would have provided more express authority for the Department of Environmental Conservation (DEC) to institute a market-based cap and trade program in the transportation sector was removed from the final version of the law. Moreover, while the state has participated with regional states in planning for the "Transportation Climate Initiative," which is meant to result in the equivalent of a Regional Greenhouse Gas Initiative for transportation, it has been less committal to the proposition than its neighbors.

While the CLCPA did not provide specific authority for market-based funding mechanisms or set headline-grabbing goals for the transportation sector, the law did require its Climate Action Council (the recommendations of which have to be adopted in the State's Energy Plan, which Plan has the force of law) to make recommendations for reducing emissions in the sector, and it authorized and directed the DEC to commence a rulemaking covering reduction of emissions economy-wide. The bill requires the Council's Scoping Plan to include "[I]and-use and transportation planning aimed at reducing greenhouse gas emissions from motor vehicles" and "measures to promote the beneficial electrification of personal and freight transport...." Furthermore, the DEC's greenhouse gas reducing rulemaking must "include measures to reduce emissions from . . . sources that have a cumulatively significant impact . . . , such as internal combustion vehicles." These longer-term measures will set regulatory structures and funding mechanisms for the beneficial electrification of New York's transportation sector.

FAST CHARGERS AND SLOW PROGRESS: THE STATE OF THE NEW YORK ELECTRIC VEHICLE MARKET AND WHAT COMES NEXT

And calls are being made for the legislature to pass, and the Governor to sign, a Low Carbon Fuel Standard (LCFS) bill in the 2020 legislative session, which begins in January and winds up in June. On October 18, a group of Assembly Members led by Carrie Woerner, who introduced an LCFS bill in the 2019 session, re-upped their push for the measure in a letter to Governor Cuomo, urging him to include it in his proposed budget bill. With little else climate-related on tap for this legislative session, and the paucity of progress on emissions in New York State's transportation sector, this provision could have appeal.

In the Meantime, At the Public Service Commission...

While the State prepares for big-picture policy to unfold within the construct of the CLCPA and DEC rule-makings, the Public Service Commission (PSC) has tackled the task of reforming rate structures that have historically inhibited the deployment of fast chargers.

In April 2018, the PSC opened a proceeding (Case No. 18-E-0138) to "consider the role of electric utilities in providing infrastructure and rate design to accommodate the needs and electricity demand of electric vehicles and their supply equipment."

In February of this year, the PSC issued its *Order Establishing Framework for Direct Current Fast Charging Infrastructure Program*, which declined to allow EV chargers to qualify for non-demand-based rates. Instead, the Order established utility programs that provide for payments, on a per-plug basis, to developers of new, "publicly accessible" DCFC chargers. The Order declined to address broader EV implementation plans and IOU rate design guidance, but noted that Department of Public Service (DPS) staff had been "tasked with developing a whitepaper that addresses a range of EV topics including utility roles, and potential ownership models, supporting [electric vehicle supply equipment and infrastructure]."

On February 28, 2019, Tesla, Inc. filed a petition for rehearing, arguing that the Order erroneously defined a "publicly accessible" charger by reference to specific plug types commonly used by American, European and Asian manufacturers, which precluded Tesla from receiving the incentive unless their proprietary technology was coupled with systems used by other companies. On July 12, 2019, the PSC granted the petition, in part, and adopted a technology-neutral definition that includes "proprietary plugs at stations that are co-located with a commonly accepted non-proprietary standardized plug-type of the same or greater kW level as the other plugs being installed." See NYPSC, *Order Modifying Incentive Program and Granting, In Part, Petition for Rehearing*, Case 18-E-0138 (July 12, 2019) (pp. 2-3).

On August 22, 2019, the Alliance for Clean Energy New York (ACE-NY) and the Advanced Energy Economy Institute (AEE) filed a letter urging progress in the docket by, at a minimum, the DPS issuing its EV White Paper before the end of 2019. According to the letter, the Commission had indicated that DPS would issue a white paper clarifying its views on a variety of EV-related regulatory matters after working through the material from the July 2018 technical conference and related stakeholder comment process. ACE-NY and AEE noted that over a year had passed, other State utility commissions had since published similar roadmap documents, and New York was not on track to reach its goals, currently ranking 30th among U.S. states in charging stations per capita. This echoed a similar letter filed by environmental and labor groups in June 2019, urging the Commission to prioritize completion of its EV whitepaper as it could provide a forum for holistic guidance about roles, responsibilities and timing going forward. [1]

FAST CHARGERS AND SLOW PROGRESS: THE STATE OF THE NEW YORK ELECTRIC VEHICLE MARKET AND WHAT COMES NEXT

What Comes Next

Once the DPS issues its white paper, hopefully later this year, a further notice and comment period will likely commence. Comments will be due 60 days after DPS issues its notice, a shorter period for replies to those comments may be open, and then DPS staff will get to work writing the Order for the Commission's consideration. If the proceeding sticks to conventional timeframes, the Commission could issue an Order in the second quarter of 2020.

The proceeding and the Commission's Order will likely address a myriad of open questions such as rate design for DCFCs, the need for consumer education either through utility channels or some other method, ownership and financing of EV charging infrastructure, locational value of such infrastructure and how price signals can account for that, and opportunities for EV's to provide grid flexibility by feeding electricity back into the system when called upon and business models to achieve such a result.

On a parallel track in early 2020, the CLCPA's Climate Council will have convened its advisory groups and will at least be preparing to work on its mandated Scoping Plan, which, as described above, will address the big picture questions of how the state's transportation can be decarbonized. Simultaneously, the Governor and legislature may well be discussing an LCFS along the lines of California's, which could fuel the buildout of EV infrastructure.

In sum, 2020 could well be a make or break year for New York's EV policy and economics. With proceedings on tap, legislation in the offing, and economy-changing recommendations being formed by the CLCPA's Climate Council, this is a space on which to keep a close eye.

To learn more about participating in the EV docket or New York's regulatory environment for developing and financing EV infrastructure more broadly, please contact a member of Hodgson Russ's Renewable Energy Practice at: <https://www.hodgsonruss.com/practices-renewable-energy.html>

If you received this alert from a third party or from visiting our website, and would like to be added to our Renewable Energy mailing list, or any other mailing list, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html>

[1] Letter from the Sierra Club, IBEW et al. (June 13, 2019)