

ESSENTIAL INVESTMENT IN NEW YORK'S GRID IS ON THE HORIZON; NY PSC SETS THE COURSE FOR MAJOR TRANSMISSION PLANNING AND UPGRADES

Hodgson Russ Renewable Energy Alert
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In Governor Andrew M. Cuomo's May 26, 2020 daily briefing related to the COVID-19 pandemic, he emphasized that rebuilding the State's economy will include major investments in renewable energy and transmission upgrades. Specifically, the Governor's presentation emphasized that the State would "jumpstart the future" by, among other things, increasing renewable energy "production Upstate with building of new cross-state transmission cables." The Governor's statement follows on the heels of the May 14 New York State Public Service Commission (PSC) *Order On Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*,^[1] (the "Transmission Planning Order"), which kickstarted implementation of the provisions of the Accelerated Renewable Energy Growth and Community Benefit Act (the "Act")^[2] with respect to distribution and transmission upgrades, capital expenditures and planning. Specifically, the Transmission Planning Order reviews the legislative directives of the Act, immediately implements certain mandates and outlines the additional actions the Commission plans to pursue in order to fulfill the objectives of the Act over the next several months.

The Act's Directives for Transmission and Distribution Planning

As we discussed in our alert regarding the Act, the law was passed as part of New York State's annual Budget Bill and as a follow-on to the Climate Leadership and Community Protection Act ("CLCPA"). The Act set forth, among other priorities, the State's recognition that the CLCPA's ambitious climate goals cannot be achieved ^[3] without restructuring and repurposing of its electric transmission and distribution infrastructure. The Act therefore directed the Commission to develop and implement plans for future investments in the electric grid.

First, it directs the Commission, in consultation with other state agencies, utilities and the New York Independent System Operator ("NYISO"), to conduct a "comprehensive study for the purpose of identifying distribution upgrades, local transmission upgrades, and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of the CLCPA targets"^[4] This is

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referred to as the "power grid study." An initial report of the findings and recommendations of the power grid study is required by December 31, 2020.

Second, the Act directs the Commission to commence two proceedings to advance needed projects identified through the power grid study.[5] One proceeding is to focus on establishing "a distribution and local transmission capital plan" for each utility.[6] These utility plans will describe and prioritize the local transmission and distribution "upgrades" that the Commission determines are "necessary or appropriate" to meet the CLCPA targets.[7] The Act provides that these upgrades will be implemented according to existing procedures under the Public Service Law.

The other planning proceeding mandated under the Act relates to the bulk transmission system. The Act requires a state-wide plan to identify and implement transmission-level investments that are "necessary or appropriate to achieve the CLCPA targets." The Act further specifies two different approaches to project implementation. Transmission investments that the Commission determines need to be "completed expeditiously" will be referred to the New York Power Authority (NYPA) for development and construction. Other projects are to be selected for implementation through the NYISO's public policy planning process.

The Transmission Planning Order

In the Transmission Planning Order, the Commission explains that the directives of the Act require it to revisit – really, reinvent and streamline – the traditional decision-making framework that the Commission and the utilities have relied on for investing in transmission and distribution infrastructure.

The Act requires the Commission to identify a strong portfolio of potential transmission and distribution projects that can support the development and delivery of renewable energy. The Commission will need to evaluate the contribution of these projects to the State's climate goals while continuing to preserve the obligation of safe, reliable and cost-effective service. With regard to the cost of these projects, the Commission notes that it will have to reexamine cost-containment and cost-recovery mechanisms and potentially develop new mechanisms where traditional measures prove deficient.

With this proceeding, the Commission will begin developing a decision-making framework that serves these goals.

1. Local Transmission and Distribution Planning

At the outset, the Commission notes that the State's utilities are best positioned to develop proposals for a revised decision-making framework, and that as some of the tasks are already under way. For example, the State's utilities are already conducting a comprehensive evaluation of the future needs of the higher voltage transmission system in addition to developing a study that will provide insight into other system needs. In the Order, the Commission therefore directs the utilities to build upon these efforts to identify the distribution and local transmission upgrades that may be "necessary or appropriate" to the timely achievement of CLCPA objectives. In so doing, the Commission provides the utilities with a number of considerations to be made over the course of the study such as "Identify[ing] existing constraints or bottlenecks that limit energy deliverability" and "Identify[ing] least cost upgrade projects to increase the capacity of the existing system." [8] With these elements included, the utilities' study will serve as one component of the comprehensive power grid exercise called for in the Act.

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Preliminary results of the utility study are to be filed with the Commission no later than August 1, 2020, with final results due by November 1, 2020.

In addition, the Commission calls upon previously established utility working groups to develop proposals for the process that will guide the utilities' future investments. These proposals are to address issues such as "An approach to account for CLCPA benefits in the utilities' planning and investment criteria," and "A benefit/cost analysis to apply in assessing potential investments in CLCPA upgrades to the distribution and local transmission systems, as well as any other criteria the utilities believe."⁹ Once drafted, these proposals will be subject to public and stakeholder comment.

2. Utility Models for Cost Recovery and Cost Allocation

The utility working groups are also directed to file proposals on rate-making and cost recovery no later than October 5, 2020. To assist with the development of these proposals, the Commission provides guidance on possible models for cost recovery for three categories of projects that may contribute in different ways to the State's CLCPA goals.

The first category is "business as usual projects" that are needed according to the utilities' traditional investment criteria — such as the like-kind replacement of aging assets — that simultaneously provide support for renewable integration or other CLCPA goals. The Commission suggests that these projects' costs would be recovered from ratepayers, as they would be in the ordinary course.

Second, the Commission explains that some "business as usual" projects may present opportunities to expand or enhance the existing system's ability to realize the benefits of renewable resources. Where the utility can modify an already needed project to capture that additional benefit, a cost allocation methodology that recognizes the state-wide benefit of the modification might qualify as just and reasonable.

Finally, the Commission addresses projects that would not be built according to traditional investment criteria, but address a specific need or limitation affecting progress toward the CLCPA goals. Here a new model of cost recovery must be developed and the utilities will have to define the benefits of such a project in a way that is fair and objectively quantifiable, and then develop mechanisms for recovering costs from the identified beneficiaries. This latter recovery concept presents novel issues including how to identify who benefits from these CLCPA-targeted investments and by how much, as well as how to recover these costs.

The Transmission Planning Order directs the utilities to build upon these three categories of cost recovery in their proposals which will then be subject to public and stakeholder comment.

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3. Bulk Transmission Plan

As a final matter, the Transmission Planning Order addresses future plans to develop and implement a state-wide plan for building upgrades to the bulk power system also required under the Act. While not the subject of this action, the Commission notes that the studies outlined above will show how the higher-voltage transmission system may need to be configured and expanded to meet climate objectives. When the results of these studies become available in the late fall of 2020, the Commission will initiate a second proceeding to establish a framework for the bulk transmission planning and investments necessary to meet CLCPA mandates. In the interim, Staff will identify the key issues that the Act requires the Commission to resolve in developing the bulk investment plan, including the scheduling and prioritization of projects and the appropriate methodologies for funding these investments. The goal here is to establish any decisional processes needed to support bulk system investments in time to act on the results of the power grid study early in 2021.

As noted above, the Act authorizes two different approaches to project implementation and bulk system investment. Projects that the Commission determines should be “completed expeditiously” are authorized to be referred to NYPA for immediate development and construction “by itself or in collaboration with other parties as it determines to be appropriate,” while all other projects are to be implemented through the NYISO's public policy planning process. Once underway, NYPA will be a key player in the implementation of bulk system investments—something stakeholders may wish to consider as they look ahead.

Overall, the Transmission Planning Order is the first step towards transmission and distribution investment that is essential to the realization of New York State's ambitious climate goals. At the heart of this proceeding is the question of how the Commission – through both the state's investor-owned utilities and in partnership with NYPA – can carry out the CLCPA and Act's directives in an expeditious and cost-effective manner. This proceeding puts in place the essential frameworks toward the achievement of this tall order.

For additional guidance on this and other NY PSC Proceedings, please contact Hodgson Russ's Renewable Energy Practice including Noah Shaw (518.736.2924), Dan Spitzer (716.848.1420) or Mila Buckner (646.218.7658).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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[1] Case 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Order On Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (issued May 14, 2020), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FF8A7989-D35E-4636-8A9A-F886808FD2F7}>.

[2] Chapter 58 (Part JJJ) of the laws of 2020.

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[3] The CLCPA established specific targets for reducing greenhouse gas (GHG) emissions for all sectors of the economy and removing carbon produced by energy generation. Specifically, the CLCPA requires: (1) a 40% reduction in GHG emissions from 1990 levels by 2030 and an 85% reduction by 2050; (2) achieving a renewable electric generation target of 70% by 2030 and a 100% emissions-free electric supply by 2040; and (3) the addition of 9 Gigawatts (GW) of offshore wind generation to the energy portfolio by 2035.

[4] *Id.* at § 7(2).

[5] *Id.* at § 3 and 4.

[6] The Act also requires the Long Island Power Authority to establish a similar capital program to address local transmission and distribution upgrades in its service territory.

[7] Chapter 58 (Part JJJ) of the laws of 2020, § 7(d).

[8] Order at p. 6.

[9] Order, pp. 7-8.

