

BENEATH THE WAVES: NEW YORK STATE AND LOCAL TAX AND REGULATORY LANDSCAPE FOR OFFSHORE WIND PROJECTS

Hodgson Russ Renewable Energy Alert
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New York's second solicitation for offshore wind contains many of the same features as its 2018 inaugural request for proposals, but others are new – or at least newly infused with enhanced emphasis on project viability metrics and robust permitting plans. This theme is consistent with the State's across-the-board push for renewable energy project proposals to be more mature – reducing the risk that awarded projects won't be built, and reflecting the sometimes hard-learned reality that even projects with solid high-level economics can fail if state and local permitting and regulatory issues are not spotted early and effectively managed.

As the August 4, 2020 Wood MacKenzie report describes, and Joe Martens, Director of the New York Offshore Wind Alliance (a project of ACE-NY) stated, offshore wind is “a massive domestic clean energy resource and many states have set ambitious offshore wind goals to reap the economic and environmental benefits...” Ensuring project viability is therefore at a premium as states make big bets and look to reap the “massive” rewards. In this piece, we discuss certain of the existing and soon-to-evolve New York state and local permitting, tax, labor and regulatory issues with respect to which successful navigation will be key to the success both of individual projects and the industry more broadly.

I. The RFP and Its Authority

On July 21, 2020 the New York State Energy Research and Development Authority (“NYSERDA”) issued ORECRFP20-1 seeking up to 2,500 megawatts of offshore wind with complementary port infrastructure proposals. The RFP is available at <https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pt000000NG9LMEA1>. [1] Proposals are due October 20 and awards are expected early next year. ORECRFP20-1 was launched in accordance with the New York State Public Service Commission's (“PSC”) Orders [2] (the “Offshore Wind Orders”) and moves the State one step closer to its goal of 9,000 megawatts (“MWs”) of installed offshore wind by 2035, as required by the 2019 Climate Leadership and Community Protection Act (“CLCPA”).

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II. State Permitting

The primary State environmental review and approval for an offshore wind project is conducted by the PSC pursuant to Public Service Law Article VII (“Article VII”) and encompasses the transmission facilities to be sited on land as well as those within three miles of shore.

Article VII, “Siting of Major Utility Transmission Facilities,” requires a full review of the need for and environmental impact of the siting, design, construction, and operation of major transmission facilities in New York State.^[3] Included in the definition of major transmission facilities are “lines with a design capacity of 100 kV or more extending for at least 10 miles, or 125 kV and over, extending a distance of one mile or more.”^[4] The definition necessarily implicates the electric transmission cable and interconnection facilities associated with an offshore wind farm. As such, an offshore wind developer must obtain a Certificate of Environmental Compatibility and Public Need (“CPCN”) from the PSC for the portion of the project located within New York territorial waters (anything three nautical miles from shore). The remainder of the project, located outside of this boundary, is subject to federal jurisdiction (*i.e.*, review and easement provisions imposed by the Bureau of Ocean Energy Management (“BOEM”)).

To obtain a CPCN, a developer must submit an Article VII Application, including the results of various technical studies (including a year or more of project specific environmental data), which support a preferred cable route as compared to any alternatives. This application then becomes the subject of a lengthy review with significant opportunity for stakeholder and public feedback. The process may also include a settlement period in addition to evidentiary hearings and a litigation phase that allows the Commission to gather input on the conditions that will be included in the CPCN governing project construction, operation and decommissioning. In the Article VII process, once an application is filed no local or other state agency may require any hearings or permits concerning the proposed facility. The PSC makes the final decision regarding all applications and thus Article VII establishes the state-level forum in which community residents, municipalities, state and local agencies as well as other stakeholders engage in the review process, voice their opposition, and exert leverage with respect to the range of negotiations in which they may be engaged with developers.

A. The South Fork Case Study

A closer look at the Article VII review for the South Fork Wind Farm (in which the project entity and applicant is Deepwater Wind South Fork, LLC (“Deepwater”), a joint venture between Ørsted and Eversource), provides an example of the issues that application approval turns on as well as the character of the review which is likely to include intense public feedback as residents, municipal officials and other participants review the proposed project with a fine tooth comb.

On September 14, 2018, Deepwater submitted its Article VII application. Following requests from the PSC for supplemental information, the application was deemed complete on March 20, 2019 and formal review commenced. This began with a series of public hearings that highlighted the issues likely to be typical to an offshore Article VII review. Chief among these is the question of whether the proposed cable burial route is acceptable, or whether there were more suitable alternatives; what impacts would the route have on terrestrial and marine environments; whether project construction and operation would disrupt the local commercial and recreational fishing industry; whether the

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electromagnetic field (EMF) from the cable would present a hazard to public health and safety; whether the project construction would impact the local community (e.g., noise, road closures that lead to traffic); what would happen in the event of a cable exposure; and whether and how the project would be decommissioned.[5]

In October of 2019, interested stakeholders moved into confidential settlement discussions in an attempt to reach an agreement on many of these issues. At present, this settlement is scheduled to close in the coming months with a litigation phase, including the filing of testimony and evidentiary hearings before a PSC appointed Administrative Law Judge, beginning in August. If this schedule remains unchanged, Deepwater is likely to see a decision from the PSC in the New Year, at the earliest. As such, the formal review of Deepwater's Article VII application will have spanned two years, not including the environmental studies that must be conducted to prepare the application (+1 year), and approvals, such as an Environmental Management and Construction Plan, that are required after a decision to grant a CPCN is issued (+1 year) and before project construction may commence.

B. Article VII's Impending Facelift

While the three-to-four year timeline for the Article VII process experienced by the South Fork project has been the norm, just this spring New York passed new legislation to streamline the proceeding. On April 3, 2020, New York enacted the Accelerated Renewable Energy and Growth and Community Benefit Act (the "Act"), which adopted sweeping changes to the siting of large-scale renewable energy projects including an amendment to Article VII design to help speed up the review of major transmission projects. Pursuant to Part JJJ §9(a) of the Act, amending Public Service Law Section 123(3), the PSC will now be required to issue a final decision on an application for a CPCN within 12 months from the date the application is deemed complete. This timeline may be extended by no more than six months in order to: (1) give consideration to a specific issue necessary for the development of the record (2) because the applicant has been unable to obtain necessary approvals or consents (e.g. highway crossing) (3) for other reasons deemed in the public interest or (4) because there is a substantive and significant amendment to the application. The PSC must issue a decision within these deadlines unless the Applicant waives the deadlines or notices the application for settlement.

The Act also directs the PSC to develop an expedited process for reviewing major utility transmission applications that would be (1) constructed within existing rights of way (2) the PSC determines would not result in any significant adverse environmental impacts considering current uses and conditions at the site or (3) would expand existing rights-of-way but only for the purposes of complying with regulations related to EMFs.

Here the PSC would be required to issue a final decision within nine months of a determination that the application is complete. Again, this deadline would be suspended if the application were noticed for settlement discussions and tolled until such time as settlement is suspended. Following these amendments, developers may navigate the Article VII process more quickly.

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III. Siting and Local Approvals

While Article VII preempts most local permitting and empowers the PSC to waive compliance with local laws (e.g., zoning codes, noise ordinances, etc...), it does not encompass all aspects of project siting.[6] Public Service Law §126(f) provides that when issuing a decision to grant a CPCN, the PSC “may refuse to apply any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive.” But beyond Article VII, for example, a developer must enter into separate contracts for the right to develop the project on the public or private land along which the cable route may traverse from the water, up the beach, along a road or property and to the point of interconnection. These separate easement or lease agreements may need to be approved by private and/or public parties, including utilities, boards of trustees who have title to beaches (as is the case with the South Fork project), and other entities that are often influenced by constituents and other non-commercial factors. Such contracts may include additional conditions regarding all aspects of a project, even including those not within the State’s jurisdiction such as aspects of not only the transmission facility’s construction, operation and decommissioning but also certain characteristics of the generation project sited in federal waters.

In addition to the real estate agreements, a developer should expect to enter into a Host Community Agreement (“HCA”). An HCA is a contract between a developer and the local governing body or bodies of the host community, whereby the developer agrees to provide the community with certain benefits and assurances. The primary benefit in an HCA is financial compensation to a community, which may take the place of amounts otherwise required in payment-in-lieu-of-taxes (“PILOT”) agreements (discussed below). However, these agreements can also be important tools that allow local communities to address project conditions beyond what is provided for in the Article VII CPCN. This may include considerations such as additional environmental review and mitigation, assurance that beaches, roads and other property is properly remediated from the effects of project construction, and securing the funding for decommissioning that may not occur for decades.

In New York, authority for HCAs is rooted in the exercise of the police powers delegated by the Legislature as well as a municipality’s proprietary powers over the use of municipal-owned property. HCAs have long been used by municipalities, state agencies and public authorities in the power generation field,[7] often negotiated in tandem with PILOT agreements, and have been upheld by at least one appellate court.[8] While New York has yet to see an HCA for an offshore wind project there are numerous agreements across the State for onshore projects that may be used as a reference point. However, it is worth noting that onshore projects have impacts, such as noise and visibility, which are not at issue with an offshore project.

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IV. Property and Sales Taxes

In addition to permitting and siting, real property and sales taxes are a crucial area for consideration early on in the development cycle.

A. Real Property Taxes

Generally speaking, wind energy equipment sited within New York State -- in this case the electric transmission cable associated with an offshore wind farm -- is an improvement to real property subject to taxation. Developers should understand the ability to procure an exemption or abatement. In New York there are two avenues through which an offshore wind developer may obtain such relief. These include the Real Property Tax Law (“RPTL”) § 487 exemption for renewable energy systems and Industrial Development Agency (“IDA”) property tax abatements.[9]

1. Real Property Tax Law (“RPTL”) § 487 exemption for renewable energy systems

While no court has yet addressed the question of whether the RPTL § 487 real property tax exemption applies to the components of an offshore wind farm, a plain reading of the statute suggests that it does. Under RPTL § 487(a), a partial tax exemption is available for properties that make use of “wind energy equipment” including the “. . . equipment necessary to the process by which . . . wind is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed.” Moreover, RPTL § 487(b) defines the “wind energy system” to which the exemption applies as “an arrangement or combination of . . . wind energy equipment designed to provide . . . electrical energy by the collection of . . . wind energy and its conversion, storage, protection and distribution.” [10]

RPTL § 487 exempts from real property taxation “any increase in the value [of real property] by reason of the inclusion of [wind energy equipment] for a period of fifteen years.” Under the statute, a taxing jurisdiction (*i.e.*, the County, Town and School District) may enter into a “payment-in-lieu of taxes” (“PILOT”) agreement as a replacement for the taxes it would have otherwise collected. Under the law, the amount of this PILOT agreement cannot exceed what the tax amount would have been without the exemption but may provide a tax break up to any amount otherwise owed. However, a New York State taxing jurisdiction may opt out of RPTL § 487 so that the tax exemption no longer applies -- a strategy often employed by taxing jurisdictions for leverage in the PILOT negotiation process.

Developers must negotiate RPTL § 487 PILOT agreements on an individual basis with each taxing jurisdiction (which in New York usually includes the school district, county and Town or Village) and are therefore subject to varying levels of relief.

2. Industrial Development Agency (“IDA”) property tax abatements

As an alternative to the RPTL § 487 exemption, a developer may seek a real property tax abatement from an IDA.[11] Pursuant to the IDA Act, an IDA is empowered to grant financial relief to certain businesses in

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accordance with the policy and guidelines set forth in its Uniform Tax Exemption Policy (“UTEP”). The UTEP provides the guidelines for the granting of financial assistance in the form of real property, mortgage recording, and sales tax exemptions.[12]

The structure for securing financial assistance through an IDA is known as a “Straight Lease Transaction.” The benefits associated with a Straight Lease Transaction consist of (i) exemption from mortgage recording tax, (ii) exemption from New York State Local Sales and Use Tax, and (iii) real property tax abatement.

The mortgage recording tax is a tax payable upon the recording of a mortgage. If a developer were to seek financial assistance from an IDA, there would be no mortgage recording tax for a project. The mortgage recording tax in New York State counties range from .75 of 1% to 1.25% of the face amount of the mortgage. In addition, most materials, equipment or other items purchased in connection with a project could be exempt from the New York State Local Sales and Use Tax. The sales tax savings in New York State counties range from 7% to 8.875% of capital spent on materials or services subject to the New York State Local Sales and Use Tax.

A project may also be eligible for property tax abatement. An IDA’s Uniform Tax Exemption Policy (“UTEP”) will provide the schedules for the amount of any real property tax abatement for each type of program an IDA has authorized. A developer would review each program in an IDA UTEP along with the associated real property tax abatement schedules to determine if one applied. If the IDA agreed to provide a relevant abatement the relief granted would be binding on each taxing jurisdiction. Unlike RPTL § 487, a taxing jurisdiction may not elect to opt-out.

B. Sales Tax

N.Y. Tax Law §§ 1105(a) and (c) impose sales tax – which range from 6% to nearly 9% depending on location – on the sale of all tangible personal property, and on certain services. These services include installation of tangible personal property, unless such property or services are specifically exempt. If developers are thoughtful about how they purchase and install equipment and how leases are structured, projects may qualify for the “capital improvement” exemption, allowing site improvements and equipment to be furnished and installed free of sales and use tax. Additionally, the purchase of machinery and equipment used directly and predominantly to produce electricity for sale is generally exempt from sales and use tax.

1. Capital Improvement Exemption

The taxability of charges for certain construction services (absent any other applicable exclusions or exemptions) depends on whether the work constitutes a “capital improvement” to real property as defined in N.Y. Tax Law § 1101(b)(9)(i). If the work meets the test to constitute a capital improvement, the contractor need not charge sales tax to the customer (either state or local tax). If the work fails the capital improvement test, and instead is deemed either a taxable installation or a mere repair or maintenance project, the contractor is generally obligated to collect state and local tax on its total charge to the customer (in this case, the project developer).

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In light of this significant potential cost item, developers should carefully consider strategies to limit exposure, including purchasing equipment in combination with the labor to install it and structuring any real property agreements in a manner to avoid any presumption that that the installation is not intended as permanent.[13]

2. “Production” Exemption

N.Y. Tax Law § 1115(a)(12) provides a sales and use tax exemption on purchase of equipment and machinery for use “directly and predominantly” in the production of electricity for sale. Certain components of a project may therefore be eligible for this potentially valuable exemption, to the extent they are delivered, used or installed within New York State. The “production” exemption, however, is limited to components used directly in the generating phase, as opposed to components used in transmission, distribution and storage of electricity after its generation.[14]

V. Labor and Employment Requirements

Finally, developers need to stay apprised of the labor and employment requirements at issue in New York’s offshore wind program and the otherwise applicable labor and employment laws, which continue to evolve. As the August 4, 2020 report from Wood MacKenzie relayed, there 32,000 new offshore wind jobs, many of which will be union positions, coming to the New York bight projects in the next 10-15 years. Maximizing efficiencies and ensuring compliance with that level of employment boom will be extraordinarily important to the success of the individual projects and of the industry overall from the public, political and economic points of view.

A. Current Labor and Employment Requirements

As New York State’s first offshore wind RFP and contracts did, ORECRFP20-1 specifically states that notwithstanding whether offshore wind projects are Public Works covered by Article 8 of the New York State Labor Law,[15] NYSERDA will require payment of prevailing wages and negotiation of a single Project Labor Agreement (“PLA”) for each awarded contract. The Offshore Wind Orders specifically authorize NYSERDA to include, at its discretion, such contract requirements in agreements resulting from OREC solicitations.[16] [17]

Specifically, ORECRFP20-1 provides that, unless otherwise provided in a PLA covering project construction, all laborers, workmen and mechanics performing construction activities with respect to chosen projects, including, but not limited to, the assembly, staging, installation, erection, and placement of the project and its electrical interconnection as well as those construction activities related to start-up and commissioning of the project, must be paid wages and benefits in an amount not less than the Prevailing Rates (as determined under NYS Section 220 for construction activities in New York, or for construction activities elsewhere as determined by analogous state law) that would be applicable to a public work in the area where the project construction activities occur. For construction activities in federal waters, the rates shall be those applicable at the location of the port or ports from which the laborers, workmen or mechanics are based.

This provision is likely to be backstopped with additional requirements concerning monitoring and enforcement. For example, the executed contracts from the first offshore wind solicitation, ORECRFP18-1, mandated quarterly progress

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reports including a written attestation prepared by a New York State independent certified public accountant confirming that Prevailing Wage requirements were being met.^[18] In addition, the contracts provided that the failure to pay the Prevailing Wage constituted an event of default.^[19] Under these terms, a contract recipient has a 12-month period to cure, following a written notification from NYSERDA identifying the failure to pay the Prevailing Wage.^[20] If corrective action is not taken within this period, NYSERDA may suspend the contractor's performance until the event of default is cured or it may elect to terminate the agreement.^[21] Similar language is likely to appear in the contracts following the ORECRFP20-1 solicitation as NYSERDA maintains teeth in regards to this requirement.

In parallel with the prevailing wage requirements, ORECRFP20-1 also requires each recipient of an OREC contract to enter into a PLA that at a minimum (1) covers all contractors and subcontractors on the project regardless of union affiliation; (2) provides for the referral of skilled craft workers; (3) includes comprehensive labor harmony provisions to resolve disputes among workers; (4) includes provisions for the resolution of disputes among labor management; (5) provides for coordination among trades; (6) promotes minority and low-income workers; (7) allows for use of apprentices; and (8) sets forth rules for work site access and conduct. Again, the PLA may include additional terms, such as wage rates, that are different from those set by the State.^[22]

The tasks of negotiating these provisions with the combination of trades in various locations and states, in compliance not only with the project contract requirements but also with any applicable underlying State laws, and then successfully monitoring compliance and managing amendments and regulatory interactions on an ongoing basis, will be an enormous and complex undertaking.

B. Forthcoming Changes in Labor Law

In New York State, the last legislative session brought a change with respect to whether or not the State's offshore wind projects would be considered Public Works under the State's Labor Law.

Under current New York State Law, contractors and subcontractors must pay the prevailing rate of wage and supplements (i.e., fringe benefits) to all workers under a Public Work contract. A three-prong test is applied to determine whether a particular project is Public Work.^[23] First, a public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics; second, the contract must concern a project that primarily involves construction-like labor and is paid for by public funds; and third, the primary objective or function of the work product must be the use or other benefit of the general public. In the context of offshore wind, the OREC purchase and sale contracts between NYSERDA and the developers do not meet those standards, and thus – even though NYSERDA has required PLAs and prevailing wage as a matter of contract – such projects have not been considered Public Works under Article 8 of the State's Labor Law.

However, a new law passed in the 2020 legislative session likely will make offshore wind projects Public Work, at least for contracts executed after January 1, 2022. In the Budget Bill adopted April 3, 2020, the definition of Public Work was expanded to include (i) private projects valued at \$5 million or more (ii) that received public subsidies of at least 30% of total construction costs, and, (iii) for energy projects, those that have a nameplate capacity of more than five

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MWs AC.[24] This provision will not take effect until January 1, 2022, so – assuming the contracts awarded under ORECRFP20-1 are executed prior to that date – immediate participants need only look to the requirements set forth in NYSERDA’s contracts. For contracts executed on or after January 1, 2022 – which may include projects awarded in any 2021 solicitation – developers should be aware of the additional regulatory requirements that will come with such projects being considered Public Works. These requirements include the risks of Prime liability and related prevailing wage requirements under Labor Law Section 220, the absolute necessity to make sure that workers are properly classified and paid in accordance with up-to-date prevailing wage and supplement schedules, the preparation of certified payrolls and the filing of same with the contracting agency at least every 30 days, the posting of the Public Work Project Poster, the posting of wage schedules, the provision of wage and supplement schedules to contractors and subcontracts, the filing of labor affidavits with the contracting agency and other conditions associated with the New York State Labor Law overlay.

VI. Conclusion

Offshore wind developers interested in the New York market should focus early attention on the state and local nuts and bolts of getting a project built. They will be rewarded for doing so in the State’s current and future solicitations, it will ensure issues are spotted early in the development cycle so the project can be de-risked, and, most importantly, doing so may prove dispositive with respect to whether a project is ultimately successful.

Contact Noah Shaw (518.736.2924), Dan Spitzer (716.848.1420) or Mila Buckner (646.218.7658) if you have any questions about the information contained within this alert.

If you received this alert from a third party or from visiting our website, and would like to be added to our Renewable Energy alert mailing list or any other of our mailing lists, please visit us **HERE**.

[1] CASE 18-E-0071 – In the Matter of Offshore Wind Energy, *Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement*, issued July 12, 2018 (available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B37EE76DF-81B1-47D4-B10A-73E21ABA1549%7D>); *Order Authorizing Offshore Wind Solicitation in 2020*, issued April 23, 2020 (available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={37EE76DF-81B1-47D4-B10A-73E21ABA1549}>)).

[2] CASE 18-E-0071 – In the Matter of Offshore Wind Energy, *Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement*, issued July 12, 2018 (available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B37EE76DF-81B1-47D4-B10A-73E21ABA1549%7D>); *Order Authorizing Offshore Wind Solicitation in 2020*, issued April 23, 2020 (available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={37EE76DF-81B1-47D4-B10A-73E21ABA1549}>)).

[3] 16 NYCRR Parts 86 and 88.

[4] 16 NYCRR Parts 86 and 88, §120.

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[5] Case No. 18-T-0604--Application of Deepwater Wind South Fork, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 3.5 Miles of Submarine Export Cable from the New York State Territorial Waters Boundary to the South Shore of the Town of East Hampton in Suffolk County and Approximately 4.1 Miles of Terrestrial Export Cable from the South Shore of the Town of East Hampton to an Interconnection Facility with an Interconnection Cable Connecting to the Existing East Hampton Substation in the Town of East Hampton, Suffolk County, Public Statement Hearing, June 11, 2019.

[6] Article VII, Siting of Major Utility Transmission Facilities, New York Public Service Law, §130.

[7] The New York Power Authority (NYPA) recently entered into HCAs as part of its Massena and Lewiston plant relicensing efforts. See Louis P. Ciminelli, Chairman of the New York Power Authority, Remarks at an event marking presentation of the first payment to local communities under an agreement on relicensing of NYPA's St. Lawrence-Franklin D. Roosevelt Power Project in Massena, Lisbon, New York (May 22, 2002), *available at* <http://www.nypa.gov/press/speeches/2002/20522a.htm>. In its auction of renewable energy credits, the New York State Energy Research and Development Authority (NYSERDA) rewards companies making host community payments with a higher score. Renewable Portfolio Standard Program Purchase of Renewable Energy Attributes Request for Proposals (RFP) No. 1168, *available at* <http://www.nyserda.org/Funding/1168rfp.pdf>.

[8] *Concerned Citizens of Cattaraugus County, Inc. v. Town Bd. of Town of Farmersville*, 221 A.D.2d 1010, 634 N.Y.S.2d 280 (4th Dep't 1995), *lv. to app. denied*, 87 N.Y.2d 809, 642 N.Y.S.2d 858, 665 N.E.2d 660 (1996).

[9] Neither exemption abates special assessments or special ad valorem levies levied by special districts, such as sewer districts, fire districts and others.

[10] *See* 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), in which the Commission draws a distinction between “local transmission and distribution planning,” addressing items like the interconnection cable for an offshore wind farm, and “bulk transmission planning,” including larger transmission lines unlikely to fall under the purview of distribution equipment.

[11] *See* New York General Municipal Law (“GML”) Title 1 of Article 18-A (the “IDA Act”).

[12] GML § 874(4)(a).

[13] *See* TSB-M-83(17)S, June 15, 1983.

[14] *See* 20 NYCRR § 528.13(b).

[15] ORECRFP20-1, Request for Proposals at p. 18.

[16] July 12, 2018 Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement at p. 43; April 23, 2020 Order Authorizing Offshore Wind Solicitation in 2020 at p. 29.

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[17] ORECRFP18-1, Request for Proposals at p. 14; ORECRFP20-1, Request for Proposals at p. 18.

[18] See Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement by and Between the New York State Energy Research and Development Authority and Equinor Wind US LLC Dated: October 23, 2019, §6.02.

[19] *Id.* at §13.01(i).

[20] *Id.*

[21] *Id.* at §13.02 and §14.01(a).

[22] ORECRFP20-1, Request for Proposals at p. 18.

[23] New York State Labor Law § 220.

[24] L2020 c. 58., Part FFF, § 224-a.

