

# NEW YORK STATE CLEAN ENERGY MARKET – WHAT TO WATCH FOR

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Even while the national political and policy waters churn, New York State clean energy policy and markets press ahead. And the winter of 2020 and 2021 promises to deliver major developments on a number of New York renewable energy fronts.

A change of administration in Washington, D.C. this winter could bring significant boosts to clean energy markets across the board – for example in tax policy, siting of renewables on federal lands and waters, potentially a national clean energy standard, vehicle emissions standards, and the list goes on. On the other hand, a reelection could spell status quo or even additional challenges for renewables. But New York’s policy and regulatory progress in recent years has been shown to support the rapid expansion of renewable energy even in the face of headwinds from Washington. And the State’s forthcoming markers are set for the most part by the 2019 Climate Leadership and Community Protection Act (CLCPA) and this past spring’s Accelerated Renewable Energy Growth and Community Benefit Act (Accelerated Renewables Act). Indeed, no matter what happens in November’s elections, the State’s renewable energy markets will no doubt continue to transition from launch phase in the 2010’s to scaled-up buildout in the 2020’s.

For observers of the New York State clean energy markets, here’s what to watch for in the coming months.

- Public Service Commission Order Regarding 70 by 30 (and 100 by 40?)

The CLCPA required the Public Service Commission (PSC) to “establish a program” by June 30, 2021 to get the State to 70 percent renewable electricity consumption 2030 and 100 percent “clean” (that is, including nuclear) electricity by 2040. New York State Energy Research and Development Authority (NYSERDA) and Department of Public Service (DPS) Staff issued their white paper proposal to reach “70 by 30” earlier this year, which included a broad range of proposals (which we summarized here) and the Commission issued an Order on October 15 taking up those proposals, which we discussed here; The Order materially advances the State’s renewable energy programs to the next stage of maturity and sets the stage for the 2020’s.

The Commission has not yet commenced a proceeding to address the State’s pathway to a 100 percent clean electricity system by 2040, as required by the

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CLCPA. The Zero Emission Credit (ZEC) program authorized by the Commission in 2016 that is currently supporting the upstate nuclear generator fleet expires in March, 2029, and those facilities will be up for relicensing at the Nuclear Regulatory Commission around that time. On a parallel path, however, the Climate Action Council created by the CLCPA is considering pathways to reducing the State’s economy-wide greenhouse gas emissions 85 percent from 1990 levels by 2050. So query – notwithstanding the CLCPA’s June 30, 2021 deadline – whether the Commission will tackle the knotty question of how to achieve a 100 percent clean electricity system before the Climate Action Council issues its recommendations.

- On-Shore Large-Scale Renewable Contract Awards

Bids for NYSERDA’s 2020 large-scale renewable energy credit solicitation are due October 21 and the New York Power Authority’s large-scale renewable solicitation bids were due September 14, 2020, both of which we described in detail here. The State University of New York also issued a solicitation for virtual power purchase agreement proposals from large-scale renewable projects, with bids due August 10, 2020. In the coming months, award notifications will be made and contracts executed, solidifying off-take contracts for a new fleet of large-scale wind and solar projects across the state, which may boost the market share of winning developers and kick off a slew of new permitting and siting processes together with local and tax agreement negotiations.

- The Transition from Article 10 to 94-c

The Accelerated Renewables Act effectively dismantled the “Article 10” siting process for projects 25 megawatts and larger, and replaced it with Section 94-c of the Executive Law and the new Office of Renewable Energy Siting (ORES), housed at the Department of State. We described the new law in detail here and here, which represents a major improvement from Article 10 for project developers. The ORES issued draft procedures and uniform standards and conditions in September, comments are due in December, and it is expected that final regulations will be issued in the first quarter of 2021. New projects will be making applications to this office, and some projects currently before the Article 10 Siting Board may seek to switch over to the ORES. But ORES is still staffing up, the office’s systems and procedures are being put in place, and it remains to be seen how the office will hold up against the likely crush of permit applications in the coming months.

- Round 2 of NY Offshore Wind, and Potential Future Rounds

Bids were due to NYSERDA on October 20 for Round 2 of the State’s offshore wind program, which we discussed here and here. Public reports indicate that Equinor bid both its Empire II project area and Beacon Wind, a project sited off the coast of Massachusetts, Orsted bid its Sunrise II project, and Iberdrola / U.S. Avangrid Renewables bid their Vineyard Wind project, as discussed here. But this year’s bidding behavior may have been impacted by the calendar overlap with New Jersey’s outstanding solicitation, into which bids are due December 10, the requirements that bidders have signed up a particular port facility as a part of the project, with incremental economic benefits, and uncertainty at the federal level regarding the Bureau of Ocean Energy Management’s processing of construction and operation plans and other project reviews. If the proposals for Round 2 are robust, as they were for Round 1, and the federal government swings to being actively supportive of the industry, then the State may well move to a third

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solicitation in 2021, and may again require a port facility to be bid; but if conditions break the other way there may be uncertainty with respect to the timing of a third offshore wind solicitation for the State. The CLCPA requires nine gigawatts of offshore wind installed by 2035, and the Commission's 70-by-30 Order gave NYSERDA significant flexibility to issue annual procurements of between 750 and 1000 megawatts, or to change that cadence depending upon market conditions. So the State has room to maneuver within the context of shifting federal policy and market conditions.

- Energy Storage Tariff Policy

The CLCPA requires 3,000 MWs of installed energy storage in New York State by 2030, and by the time the CLCPA was passed the Public Service Commission had already authorized incentive programs to support reaching that target. But getting those incentive levels right, and reforming the utility tariffs that so often mean a green or red light for investments in energy storage, has eluded the State thus far. These factors are particularly important in New York City where the system needs are greatest and electricity rates are higher, but siting and building approvals present unique challenges and the wholesale capacity market is unreliable because of the FERC's buyer-side mitigation Orders (see [here](#) and [here](#)). The State's much-anticipated proposal to reform the regulated utilities' buyback and standby charge calculation methodologies is delayed, but the Commission is slated to consider it in the coming months. Resolution of this important issue in a way favorable to the industry may well breathe additional life into the State's storage market, especially downstate.

- Renewable Energy Real Property Tax Policy

The question of real property tax treatment of renewable energy facilities has long bedeviled both developers and taxing jurisdictions. Well-meaning state policy provides an exemption from real property tax for renewable energy equipment, but localities can "opt out" of the exemption, and negotiate a payment-in-lieu-of-taxes. What has resulted is a hodge-podge of assessment methodologies (which sometimes leads to litigation), PILOT rates and opt-outs, inconsistent among jurisdictions and sometimes unknowable to developers until they are knee-deep in a project. This situation has led to increased costs and uncertainty for the industry, but also to an undermining of the State's well-meaning siting policies – that is, even if a solar project checks all the boxes the State would like to see (for example, a community solar project on a brownfield serving low-to-moderate income customers in a constrained load-pocket), if the PILOT demanded by the local taxing jurisdiction is unreasonable, the project won't get built and, in fact, may get built in a less desirable location. The drafters of the Accelerated Renewables Act left a provision on the cutting room floor that would have made strides to fixing this issue, as the State Legislature did decades ago for oil and gas facilities. This year, the industry is likely to take another run at reform; we'll see how that plays out by the time the State's annual Budget Bill is passed on April 1. Consistent state-wide policy in this space would further level the playing field and bring certainty to project costs.

- Transmission Reforms – Permitting and Procurements

The Accelerated Renewables Act requires significant changes to the transmission permitting process under Article VII of the Public Service Law to help speed up the review of major transmission projects. The PSC will now be

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required to issue a final decision on an application within 12 months of the application being deemed complete, which may be extended by no more than six months in certain circumstance. But the PSC has yet to commence a proceeding to amend the Article VII regulations, a process that will likely commence in the coming month. The Act also directed 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 unless that deadline is tolled, and again the ball is in the PSC's court. Relatedly, however, on October 15 the Commission approved the first "priority" transmission project under the Accelerated Renewable Act – the New York Power Authority's upgrade of its northern NY transmission line, to "unbottle" northern New York renewables.

- Resource Adequacy – Will the State Take it Back?

As we discussed in detail in April, July and September, the PSC has had a docket open for more than a year regarding whether to "take back" from the NYISO the role of ensuring the adequacy of the state's electricity generation resources, which the State delegated to the NYISO in the late 1990's upon deregulation, and which is now regulated by the FERC. Orders from the FERC in recent years inconsistent with – and even expressly opposed to – New York State energy policy, however, have led the Commission to consider the possibility of unwinding the current system. The options for moving forward with such a significant realignment of the state's energy markets are on the table, and depending upon what happens with the federal election in November and the likely make-up of the FERC in coming years, we may see the State move forward with an Order in this matter. On the other hand, the Commission may choose to stick with the current arrangement and advocate for better policy before a soon-to-be newly constituted FERC.

As is evident from this heavy list of ongoing and soon-to-come developments, what's certain about the renewable energy policy and regulatory landscape in New York State is that there will be significant forward momentum in the coming months, notwithstanding exogenous uncertainties, as the State continues to push hard to meet its ambitious goals.

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