



Accelerated Renewable Energy Growth and Community Benefit Act Modifies New York's Electric Generation and Transmission Siting Regimes

April 10, 2020

As part of the New York State 2020-2021 budget, the State enacted the Accelerated Renewable Energy Growth and Community Benefit Act (Act)^[1] in early April, 2020. The Act is designed to streamline and expedite the siting of major renewable energy projects and associated transmission facilities to help achieve the State's clean energy and climate goals, including the requirement in the State's 2019 Climate Leadership and Community Protection Act (CLCPA) that a minimum of 70 percent of the State's electric generation be produced using renewable sources by 2030.

The Act establishes an Office of Renewable Energy Siting within the Department of State (DOS) and imposes implementation responsibilities on several other cooperating State agencies, including the New York State Energy Research and Development Authority (NYSERDA), Department of Public Service (DPS), Department of Environmental Conservation (DEC), New York Power Authority (NYPA) and Empire State Development Corporation. The new Office of Renewable Energy Siting is intended to implement the timely consolidated review and permitting of major renewable energy facilities in a single forum that takes into consideration environmental, social and economic factors pertinent to the decision to permit such facilities.

The most significant impact of the Act is that it modifies the standards and procedures under Article 10 of the Public Service Law (PSL) applicable to the siting of major electric generating facilities that use renewable technology. The Act also introduces time frames designed to expedite action on certain transmission facilities under PSL Article VII, and designates NYPA to develop bulk transmission investments found by the Public Service Commission (PSC) to be needed expeditiously to achieve CLCPA targets. This Client Alert summarizes those provisions.

First and foremost, the Act shifts siting authority for many renewable generation projects from the PSL Article 10 certification regime to DOS's new Office of Renewable Energy Siting. Under Article 10, the State Board on Electric Generation Siting and the Environment (Siting Board), whose members include the DPS and NYSERDA chairs and the commissioners of DEC, Health and Economic Development, review generator siting applications. The Act moves siting jurisdiction from the Siting Board to the Office of Renewable Energy Siting for those electric

generation facilities that meet the Act's definition of "major renewable energy facility." This term covers projects with a nameplate generating capacity of 25 megawatts or more that use the renewable technologies listed in the CLCPA's definition of "renewable energy systems."^[2] It also considers any new electric transmission facility less than ten miles long proposed to connect to such a facility to be a part of the generation project.

Under the Act, a developer proposing to construct a "major renewable energy facility" in the State must now apply for a Siting Permit from the new DOS Office of Renewable Energy Siting. Projects sized between 20 and 25 megawatts but otherwise meeting the definition of "major renewable energy facility" have the option to apply to the same office for a Siting Permit. The Act requires the Office of Renewable Energy Siting to promulgate regulations and uniform standards and conditions that address impacts common to major facilities and that achieve a net conservation benefit for any impacted endangered and threatened species. In particular, the standards and conditions applicable to the siting, design, construction and operation of the facility must be designed to avoid or minimize, to the maximum extent practicable, potential significant adverse environmental impacts.

The Office of Renewable Energy Siting has 60 days from the date of its receipt of a Siting Permit application to make a completeness determination. An application will not be complete without proof of consultation with the host municipality regarding the procedural and substantive requirements of its applicable local laws. After a completeness determination, draft permit conditions will be issued by the Office of Renewable Energy Siting for public comment. Within the established comment period, the host municipality must submit a statement indicating whether the facility complies with applicable local laws concerning the environment or public health and safety. The Office of Renewable Energy Siting must make a final decision on any application for a Siting Permit within one year of the date the application is deemed complete, unless the project is sited in a former commercial or industrial site, in which case a final determination on the permit application is to be made within six months.

The Act adds accelerated timeframe language to PSL Article VII governing the siting of major utility transmission facilities. One provision requires the PSC to issue a final decision on an Article VII application within one year of the date the application is deemed complete. This provision has numerous exceptions, however. The deadline can be waived by the applicant, or the time period tolled by the initiation of settlement negotiations. The PSC can extend the review period "in order to give consideration to specific issues necessary to develop an adequate record, because the applicant has been unable to obtain necessary approvals and/or consents related to highway crossings or for other reasons deemed in the public interest." Any amendment to the application that is "substantive and significant" triggers the requirement for a new public hearing within sixty days, and then the PSC has six months to issue a final decision.

Another acceleration provision of the Act requires the PSC to promulgate rules or regulations setting a nine month time period for the PSC to act on applications for electric transmission projects (i) proposed to be built within existing utility corridors, (ii) that would not result in any significant adverse environmental impacts, or (iii) that would require the expansion of the corridor solely to comply with EMF guidelines. This time period is tolled by the initiation of settlement negotiations.

The Act also amends the Article VII impact criteria to require that the PSC find only that a proposed project avoids or minimizes significant adverse environmental impacts and impacts on farming *to the extent practicable*, as opposed to the former requirement that a project represent the minimum environmental impact.

The Act directs the DPS, in consultation with NYSERDA, NYPA, electric utilities and other energy industry stakeholders, to develop a State Power Grid and Study Program to identify necessary distribution and local transmission upgrades, and to separately address needed bulk transmission system investments to deliver to consumers the renewable energy produced by major renewable energy facilities. Moreover, the Act directs the PSC to designate “priority transmission projects,” which are bulk transmission investments needed expeditiously to achieve CLCPA targets, and it designates NYPA, on its own or with partners, to develop such projects.

If you have any questions concerning the changes that the Accelerated Renewable Energy Growth and Community Benefit Act makes to PSL Article 10 and Article VII, or any of the Act’s other provisions, please contact Dave Metcalfe, Angela Cascione or Brendan Mooney via email at DMetcalfe@CullenLLP.com, ACascione@CullenLLP.com, or BMooney@CullenLLP.com.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

[1] Chapter 58 of the Laws of 2020.

[2] These technologies are “solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.” PSL § 66-p(1)(b).

Practices

- Energy, Renewables and Utilities

Attorneys

- David T. Metcalfe
- Angela N. Cascione
- Brendan J. Mooney