
Gov. Cuomo Establishes Moreland Commission to Review Performance of Power Companies

December 20, 2012

Hurricane Sandy caused widespread devastation to many parts of New York and left millions without power. In the days after the Hurricane, New York State Governor Andrew Cuomo repeatedly criticized the utilities for being “unprepared” and taking too long to restore power. On November 13, 2012, Governor Cuomo established a Moreland Commission, pursuant to Section 6 of the Executive Law, to investigate the response, preparation, and management of New York’s power utility companies with major storms hitting the state over the past two years (the “Moreland Commission”).

The Moreland Commission moved quickly and held its first meeting on November 20, 2012, at which it selected Regina Calcaterra as its Executive Director. It also established two subcommittees; one led by Nassau County District Attorney Kathleen Rice to investigate preparation and response, and another led by former Public Service Commission Chairman Peter Bradford, to review utility and regulatory structures.

Shortly thereafter, on November 28, 2012, the Moreland Commission issued subpoenas to the Long Island Power Authority (“LIPA”) and Consolidated Edison Company of New York, Inc. (“Con Edison”), seeking information about their preparation, response and recovery efforts during Hurricane Sandy. These subpoenas follow those issued by New York Attorney General Eric T. Schneiderman who, acting independent of the Moreland Commission, issued subpoenas on November 14, 2012, to Con Edison and LIPA in furtherance of his own investigation into the utilities’ responses to Hurricane Sandy.

The Moreland Commission held its first public meetings on Thursday, December 6, 2012, in New York City and Tuesday, December 11, 2012, in Westbury. The hearings focused on utilities’ preparedness and response and recommendations for restructuring utilities and featured testimony from experts on improvements that can be made to the grid to avoid future massive outages. Members of the public were also provided an opportunity to speak. County executives from both Nassau and Suffolk Counties criticized LIPA’s lack of preparation and communication.

The Moreland Commission’s next public meeting is planned for December 20, 2012, on Long Island. That meeting will focus specifically on LIPA’s and National Grid’s storm response.

Duties of the Moreland Commission

The specific purpose of the Moreland Commission is to “study, examine, investigate and review: (i) the emergency preparedness and response of utilities during and following emergency weather events, including the performance of the utilities during and following emergency weather events; (ii) the adequacy of present laws, rules, regulations, practices and procedures with respect to utilities’ emergency preparedness and response; (iii) the adequacy of existing oversight and enforcement mechanisms; (iv) the structure, organization, ownership, financing, control, management and practices of the utilities as they affect emergency preparedness and response; and (v) the provision of utility services to New York State under the existing legal regulatory framework.”

To carry out this investigation, Governor Cuomo empowered the Moreland Commission to subpoena documents and testimony that it deems relevant or material to its investigation. Governor Cuomo also directed every State department, agency, office, division, board, bureau, council, authority, and public benefit corporation to cooperate with the Moreland Commission and assist it with its investigation.

Upon completion of its investigation, the Moreland Commission will “report and make recommendations for legislative, policy and regulatory changes, as well as reforms as deemed appropriate in utility structure, management and practices, to best protect and serve the public’s interest with respect to emergency preparedness and response, and the provision of safe, reliable, responsive utility services.”

Scope of Authority and Subpoena Power of a Moreland Commission

The Moreland Act (Section 6 of the Executive Law) authorizes the Governor to appoint a commission only for the purposes of investigating the “management and affairs of any department, board, bureau or commission *of the state*.” N.Y. Exec. Law § 6 (McKinney 2012) (emphasis added). Nevertheless, the Moreland Act has been used in the past to investigate private industry vis-a-vis an investigation into the state’s regulation of such industry. See *Sigety v. Hynes*, 38 N.Y.2d 260 (1975) (regarding an investigation into private nursing homes).

In addition, in its investigation of state agencies and laws, courts have held that it is within a Moreland Commission’s authority to subpoena testimony or documents from non-state entities or individuals whose activities are regulated or directly relate to the laws or state entities under scrutiny. *New York State Republican State Committee v. New York State Commission on Government Integrity*, 138 Misc.2d 790 (N.Y. County Sup. Ct. 1988) aff’d, 140 A.D.2d 1014 (1988) (holding a Moreland Commission could lawfully subpoena testimony and documents from the Republican State Committee because its activities were regulated or were directly related to the laws or state entities under scrutiny); see also *Weil v. New York State Commission to Investigate Harness Racing*, 205 Misc. 614 (Nassau County Sup. Ct. 1954) modified sub nom. *Application of Weil*, 283 A.D. 808, (2d Dep’t 1954) (holding a Moreland Commission had the right to issue subpoenas on any party possessing information relevant to its inquiry even if the individuals were unconnected with the state or the agency under investigation).

This is the first time the Moreland Act has been evoked to investigate the regulation of public utilities.

Practices

Industries

- Energy and Utilities

Attorneys

- Brian T. FitzGerald
- Gregory G. Nickson