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New York's RAPID Act Intended to Accelerate the Environmental Review and Permitting Process for Siting Both Renewable Energy and Electric Transmission Line Projects

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Introduction

On April 20, 2024, New York enacted the Renewable Action Through Project Interconnection and Deployment Act (the "RAPID Act" or the "Act") as part of the FY 2025 Executive Budget Legislation.[1] The new law is intended to expedite the environmental review and permitting of major renewable energy facilities ("MREF")[2] and major electric transmission facilities ("METF")[3] to achieve the renewable energy and greenhouse gas ("GHG") emissions reduction targets established by the Climate Leadership and Community Protection Act ("CLCPA").[4]

To achieve these goals, the RAPID Act: (i) creates a new single forum for the review and permitting of both MREF and METF,[5] (ii) establishes a framework for a streamlined application review process, (iii) includes regulatory timeframes for initial and final determinations with respect to such project applications, and (iv) alters the role of municipalities in these project application proceedings.

The Office of Renewable Energy Siting

Under the RAPID Act, the Office of Renewable Energy Siting ("ORES") will be transferred from the Department of State to the Department of Public Service ("DPS") and ORES will be responsible for the review and permitting of both MREF and METF.[6] Thus, in addition to its current siting jurisdiction over MREF projects, ORES will assume permitting authority over METF, which currently falls under the Public Service Commission's authority under Article VII of the PSL. ORES, in consultation with DPS, is authorized to promulgate regulations to implement the RAPID Act.

Uniform Siting Conditions and Application Requirements

The RAPID Act creates a new Article VIII of the PSL, which includes the requirements related to ORES' review of applications and the issuance of siting permits for both MREF and METF. To expedite the permitting process, ORES is authorized, in consultation with the New York State Energy Research and Development Authority ("NYSERDA"), the New York State Department of Environmental Conservation ("NYSDEC"), the New York State Department of

Agriculture and Markets, as well as other relevant state agencies (collectively, the "State Agencies"), to establish and amend a set of uniform standards and conditions for the siting, design, construction and operation of MREF.[7] Additionally, within 12 months of the Act's effective date, ORES must develop uniform standards and conditions for the siting, design, construction and operation of METF.[8] These uniform standards and conditions will be intended to reduce, to the extent practicable, any potentially significant adverse environmental impacts resulting from such MREF and METF.[9] ORES, in consultation with NYSDEC, may supplement the uniform standards with site-specific permit terms and conditions for environmental impacts that are not sufficiently addressed by the uniform conditions.[10] To the extent that the uniform and site-specific permit conditions do not entirely address the environmental impacts of a proposed facility, ORES may require the applicant to pay a fee to provide off-site mitigation.[11]

The new uniform standards and conditions should help to significantly expedite the permitting process for METF, which currently often requires a several months-long settlement process for the negotiation of terms and conditions applicable to such facilities' construction and operation. This revised permitting process is likely to be viewed favorably by METF developers, but it remains unclear how developers would challenge uniform standards that would not be applicable to a particular facility or site-specific conditions which they find unacceptable. If there is a lengthy process for those issues to be resolved, the new PSL Article VIII procedures may not be significantly shorter than the current PSL Article VII settlement process.

In addition to addressing uniform standards and conditions, the METF application must include the following information: "(i) the location of the site or right-of-way; (ii) a description of the transmission facility to be built thereon; (iii) a summary of any studies which have been made of the environmental impact of the project, and a description of such studies; (iv) a statement explaining the public need for the facility; (v) copies of any studies of the electrical performance and system impacts of the facility performed by the state grid operator pursuant to its tariff; and (vi) such other information as the applicant may consider relevant or ORES may by regulation require."[12] This information is similar to that currently required by PSL Article VII. Significantly, however, ORES, in consultation with DPS, may waive certain application requirements for METF that are proposed to be sited within existing rights-of-way.[13]

While this revised permitting process appears intended to streamline the ORES review once an application is complete, it remains to be seen whether ORES will require greater engineering and project design detail within the application itself (information that a PSL Article VII developer typically provides later in its Environmental Management and Construction Plan) and, if so, whether the time needed to prepare and file such an application will take longer than it does currently under Article VII. Perhaps this question will be answered when ORES adopts its RAPID Act regulations.

Application Timeframes

In addition to establishing uniform conditions for MREF and METF, the RAPID Act states that ORES must make a determination of application completeness within 60 days for MREF[14] and 120 days for METF.[15] If ORES fails to meet these deadlines, such application will be deemed complete.[16] However, for any application to be complete or be deemed complete, the applicant must demonstrate that it consulted with officials for

municipalities where the facility will be located with respect to the applicability of procedural and substantive local laws.[17] PSL Article VII does not currently impose upon the Department of Public Service regulatory deadlines for application completeness determinations, nor does it provide for applications to be deemed complete.

Within 60 days after an application has been deemed complete, ORES must publish draft permit conditions for public comment.[18] The public comment period must be a minimum of 60 days.[19]

ORES must make a final decision on a siting permit within one year from the date the application was deemed complete.[20] For MREF proposed to be sited on certain enumerated existing or abandoned commercial uses, ORES must make a final decision within six months from the date the application was deemed complete.[21]

If a final siting permit decision has not been made by ORES within the applicable timeframe, such siting permit shall be deemed to have been automatically granted unless ORES and the applicant agreed to an extension.[22]

Local Municipality Involvement in Site Permit Proceedings

The Act places additional requirements on host communities. Specifically, the Act provides that municipalities receiving notice of an application filing must submit a statement to ORES indicating whether the proposed project is designed in compliance with local laws and regulations regarding the environment and public safety.[23] If ORES receives a statement that the proposed facility would not comply with applicable local laws and ORES does not hold an adjudicatory hearing on the application, ORES must hold a non-adjudicatory public hearing in the affected municipality.[24] If public comments raise a substantive or significant issue that requires adjudication with respect to a proposed permit condition, then ORES shall hold an adjudicatory hearing.[25] These changes are significant because PSL Article VII currently requires applicants to identify applicable substantive local laws and request that the Public Service Commission refuse to apply those that would be unduly burdensome. This change in the law appears to place that burden, at least in the first instance, on municipalities rather than the applicant.

Similar to the current version of PSL Section 130, the RAPID Act provides that local permits and approvals are preempted.[26] However, where PSL 130 prohibits municipalities from requiring applicants to obtain "any approval, consent, permit, certificate or other condition" for an Article VII project, the RAPID Act provides a slightly broader preemption clause, prohibiting municipalities from requiring any "approval, consent, permit, certificate, *contract, agreement* or other condition"[27] related to the proposed project's development, operation or decommissioning. (emphasis supplied). It is unclear whether this broader preemption clause is intended to prohibit municipalities from requiring applicants to obtain road use agreements and the like for the siting of such transmission lines within municipally owned roadways. It is also unclear, if that is the intent, whether such attempt to broaden the permitting authority's jurisdiction would result in constitutional takings claims from municipalities that have historically required agreements with applicants for the use or occupation of municipal-owned property, including for transmission line facilities sited within municipal roadway rights-of-way.

Conclusion

The RAPID Act will likely be viewed favorably by many developers of METF due to the efficiency of the expedited review process. However, the revised permitting process will be further detailed and explained in the regulations to be adopted by ORES. Regulated METF developers must assess the new regulations and the uniform terms and conditions to be developed by the State Agencies to evaluate whether if, and to what extent, the RAPID Act will expedite the siting and permitting of these facilities.

If you have any questions concerning the new RAPID Act laws to expedite the environmental review and permitting of major energy facilities and electric utility transmission facilities, please contact David Metcalfe, Angela Cascione or Brendan Mooney via email at DMetcalfe@CullenLLP.com, ACascione@CullenLLP.com, or BMooney@CullenLLP.com. Thank you to Gabriella Greenhoward, a Law Clerk pending New York bar admission, who assisted in the preparation of this advisory.

Footnotes

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.

[1] L 2024, Ch. 58 § 11 (Part O).

[2] “Major Renewable Energy Facilities” means “any renewable energy system, as such term is defined in section sixty-six-p of this chapter, with a nameplate generating capacity of twenty-five thousand kilowatts or more, and any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission system, including all associated appurtenances to electric plants, including electric transmission facilities less than ten miles in length in order to provide access to load and to integrate such facilities into the state's bulk electric transmission system.” Public Service Law ("PSL”) § 137-4.

[3] “Major Electric Transmission Facilities” means “an electric transmission line of a design capacity of one hundred twenty-five kilovolts or more extending a distance of one mile or more, or of one hundred kilovolts or more and less than one hundred twenty-five kilovolts, extending a distance of ten miles or more, including associated equipment, but shall not include any such transmission line located wholly underground in a city with a population in excess of one hundred twenty-five thousand or a primary transmission line approved by the federal energy regulatory commission in connection with a hydro-electric facility.” PSL § 137-3.

[4] The CLCPA requires that the State achieve a 100% zero-emission electricity system by 2040 and a statewide reduction of GHG emissions of at least 85% below 1990 levels by 2050.

[5] PSL § 136.

[6] *Id.*

[7] PSL”) § 138(1)(a).

[8] *Id.* at § 139(1)(a).

[9] *Id.* at §§ 138(2)(a) and 139(1)(b)

[10] *Id.* at § 139(1)(d).

[11] *Id.* at §§ 138(2) and 139(2).

[12] *Id.* at § 143(2).

[13] *Id.* at § 143(9).

[14] *Id.* at § 142(1).

[15] *Id.* at § 143(1).

[16] *Id.* at § 142(1) and 143(1).

[17] *Id.*

[18] *Id.* at § 143(4).

[19] *Id.*

[20] *Id.* at §§ 142(6) and 143(8).

[21] *Id.* at § 142(6).

[22] *Id.* at §§ 142(6) and 143(8). However, a siting permit may not be deemed to be automatically granted for a facility proposed to be located on the land for which the applicant lacks an existing right-of-way agreement. This restriction could significantly hinder the progress of METF where an applicant possessing the power of eminent domain has not secured voluntary easements and is unable to exercise such power without first securing the siting permit.

[23] PSL § 143(5).

[24] *Id.*

[25] *Id.* at § 143(6).

[26] *Id.* at § 144(2).

[27] *Id.*

Practices

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