

STATE OF NEW YORK

4872

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to authorizing the power authority of the state of New York and the Long Island power authority to participate in public-private transmission projects to improve the state's electric transmission grid

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and purpose. The legislature hereby
2 finds and determines that:

3 1. The state's vital electric transmission grid is aging, congested
4 and subject to outages caused by storms, obsolescence and the growing
5 demands for energy by the state's residents, and such problems and
6 conditions pose serious threats to the health, welfare, safety and
7 economic well-being of the people of the state of New York.

8 2. The condition and operation of the state's electric transmission
9 grid is a matter of state concern, and it is in the public interest to
10 provide for the means to repair, replace, reinforce, modernize and
11 expand the state's electric transmission grid to ensure the safe and
12 reliable provision of electric service to the state's residents now and
13 into the future.

14 3. A modernized electric transmission grid and energy highway will
15 also encourage investments in new energy-related infrastructure and
16 technologies, facilitate the development and integration into the power
17 grid of renewable energy resources, and stimulate and support economic
18 development in the state. Public-private transmission projects undertaken
19 jointly by the owner of transmission facilities, systems and infrastructure,
20 including the power authority of the state of New York and the
21 Long Island power authority, which provide for the ongoing planning,
22 construction, owning, operating, maintaining and expanding of electric
23 transmission facilities, systems and infrastructure can serve as an

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 effective means to address the aforementioned problems and concerns and
2 stimulate ongoing critical investment in the state's electric trans-
3 mission grid.

4 4. The purposes of this act can be achieved, while managing and miti-
5 gating potential liabilities, by authorizing the power authority of the
6 state of New York and the Long Island power authority to participate in
7 such public-private transmission projects through the formation of
8 subsidiary companies.

9 § 2. Section 1001 of the public authorities law is amended by adding a
10 new closing paragraph to read as follows:

11 It is further declared that: (a) there should be full cooperation and
12 coordination among private and public owners and operators of electric
13 transmission facilities, systems and infrastructure in the state,
14 including the authority, for the purpose of expeditiously constructing,
15 repairing, replacing, reinforcing, modernizing or expanding the state's
16 electric transmission grid; (b) it is desirable that the authority,
17 which owns and operates electric transmission assets in the state,
18 participate in public-private transmission projects that are undertaken
19 by a limited liability company or other appropriate organizational
20 structure, through a subsidiary company formed by the authority as
21 authorized by this title; and (c) the authority should be authorized to
22 participate in public-private transmission projects and transfer trans-
23 mission assets or any interest therein in connection with its partic-
24 ipation in such a limited liability company or other appropriate organ-
25 izational structure on such terms and conditions as the authority may
26 negotiate.

27 § 3. Section 1005 of the public authorities law is amended by adding a
28 new subdivision 26 to read as follows:

29 26. a. For purposes of this subdivision, the following terms shall
30 have the meanings indicated:

31 (i) "Subsidiary company" means a subsidiary company formed, wholly-
32 owned and controlled by the authority in accordance with and subject to
33 the business corporation law, the not-for-profit corporation law, the
34 limited liability company law or the transportation corporations law.

35 (ii) "Transco master agreement" means a written agreement providing
36 for the formation and operation of a limited liability company or other
37 organizational structure to serve as a transco company and which
38 provides for, among other things, the rights and obligations of members
39 of such transco company.

40 (iii) "Transco ancillary agreement" means a written agreement, other
41 than a transco project agreement, between the authority or subsidiary
42 company and the transco company and/or members of a transco company,
43 made in accordance with the transco master agreement, for the purpose of
44 implementing the transco master agreement.

45 (iv) "Transco company" means an entity formed in accordance with a
46 transco master agreement primarily for the purpose of engaging in the
47 business of planning, constructing, owning, operating, maintaining, and
48 expanding electric transmission facilities, systems and infrastructure
49 serving the people of the state of New York.

50 (v) "Transco project" means a project undertaken by the transco compa-
51 ny in accordance with a transco master agreement.

52 (vi) "Transco project agreement" means a written agreement between the
53 authority or subsidiary company and the transco company and/or members
54 of a transco company, made in accordance with the transco master agree-
55 ment, that relates to a specific transco project.

(vii) "Transmission assets" means: (1) all physical assets (including but not limited to electrical transmission lines, poles, towers and similar structures, conduits, substations, converter stations, transformers, conductors, insulators, switching devices, controls, breakers, buses, stations, rectifiers, regulators, emergency and protective equipment and devices, utility interconnections and other equipment used or necessary for the control, dispatch, receipt and delivery of energy by such facilities) used for the purpose of transmitting or delivering direct or alternating current electric energy at voltages primarily of one hundred kilovolts or higher to loads or interconnection points; and (2) all associated (a) tangible and intangible property used to operate, control, protect and maintain such assets, (b) real property rights for lands and rights-of-way, sites, and places in which such assets are situated or installed, and (c) legal and regulatory rights, authorizations, permits, and consents of any nature to own, occupy, construct, use, operate and maintain, and receive or dispose of revenues from such assets or lands on which such assets are situated, existing, owned, leased, designed, used and operated.

b. Notwithstanding the provisions of any other law, the authority may (i) participate in public/private partnerships to provide for the means to construct, repair, replace, reinforce, modernize and expand the state's electric transmission grid to ensure the safe and reliable provision of electric service to the state's residents now and into the future, (ii) form a subsidiary company for the purpose of participating in a transco company, (iii) participate in the transco company by causing the subsidiary company to become a party to a transco master agreement and exercise the rights and perform the obligations of a transco company member as may be provided for in a transco master agreement, and (iv) exercise the other powers and duties provided for by this subdivision.

c. Notwithstanding the provisions of any other law, in addition to any other powers and duties granted to it under this title, the authority shall be authorized to:

(i) exercise all of the rights and privileges associated with any ownership interest in or organizer of the subsidiary company;

(ii) issue its bonds, notes and other evidence of indebtedness to finance the operations of the subsidiary company, including the subsidiary company's participation in and obligations undertaken in connection with a transco company;

(iii) lend, or otherwise transfer monies to the subsidiary company, including the proceeds of the authority's bonds, notes, other evidence of indebtedness and other authority funds;

(iv) receive monies from the subsidiary company, including monies that result from the operation of the transco company;

(v) as deemed feasible and advisable by the trustees, transfer to the subsidiary company transmission assets or interests therein that have been or are expected to be used in projects undertaken by the transco company for such consideration and on such other terms and conditions as the authority shall negotiate;

(vi) receive from the subsidiary company or the transco company any personal or real property;

(vii) enter into guarantee agreements in connection with the subsidiary company's participation in the transco company;

(viii) enter into contracts and other forms of agreement with the transco company, the subsidiary company and other members of the transco company;

1 (ix) pledge or assign all or any portion of any interest in a transco
2 company;

3 (x) transfer and receive all or any portion of any interest in a tran-
4 sco company;

5 (xi) sell, purchase, or otherwise transfer all or any portion of any
6 interest in a transco company on such terms and conditions as the
7 authority deems appropriate;

8 (xii) assign one or more employees to provide services to a transco
9 company for a specified period of time, provided that any such employee
10 shall continue to be an employee of the authority; and

11 (xiii) dissolve or terminate the subsidiary company in accordance with
12 applicable law.

13 d. Notwithstanding the provisions of any other law, no trustee, offi-
14 cer or employee of the state, or of any state agency, public authority
15 or public benefit corporation, shall be deemed to have forfeited or
16 shall forfeit such person's office or employment or any benefits associ-
17 ated therewith by reason of such person's acceptance of membership on,
18 or such person being an officer, employee or agent of a subsidiary
19 company, or by reason of such person's provision of services to a
20 subsidiary company.

21 e. The provisions of section twenty-eight hundred seventy-nine-a of
22 this chapter shall be applicable to any transco master agreement to
23 which the authority or subsidiary company is a party, but shall be inap-
24 plicable to any transco ancillary agreement or transco project agreement
25 that otherwise satisfies the requirements of paragraph (a) or (b) of
26 subdivision one of such section provided that (i) a final or substan-
27 tially negotiated form of such transco ancillary agreement or transco
28 project agreement, as the case may be, is annexed to a transco master
29 agreement that has become valid and enforceable in accordance with the
30 provisions of section twenty-eight hundred seventy-nine-a of this chap-
31 ter, and (ii) in the case of a transco project agreement, the final
32 executed form of such transco project agreement is limited to a transco
33 project that was identified in such transco master agreement.

34 f. The provisions of title five-A of article nine of this chapter
35 shall be inapplicable to any disposal of property by the authority or
36 subsidiary company that (i) is otherwise authorized by this title, or
37 (ii) is made in accordance with a transco master agreement that has
38 become valid and enforceable in accordance with the provisions of
39 section twenty-eight hundred seventy-nine-a of this chapter.

40 g. No acts or activities taken or proposed to be taken by the authori-
41 ty or a subsidiary company pursuant to the provisions of this subdivi-
42 sion, including the execution of a transco master agreement, and the
43 issuance of bonds, notes, or other obligations, shall be deemed to be
44 "actions" for the purposes or within the meaning of article eight of the
45 environmental conservation law.

46 h. Notwithstanding the provisions of any other law, the authority and
47 the subsidiary company may only participate in a transco company that
48 constructs, repairs, replaces, reinforces, modernizes or expands trans-
49 mission assets, and may not participate in a transco company that
50 finances or constructs new electric generating facilities.

51 § 4. Section 1020-a of the public authorities law, as added by chapter
52 517 of the laws of 1986, is amended by adding a new closing paragraph to
53 read as follows:

54 The legislature further finds and declares that: (i) there should be
55 full cooperation and coordination among private and public owners and
56 operators of electric transmission facilities, systems and infrastruc-

ture in the state, including the authority, for the purpose of expeditiously constructing, repairing, replacing, reinforcing, modernizing or expanding the state's electric transmission grid; (ii) it is desirable that the authority, which owns and operates electric transmission assets in the state, participates in public-private transmission projects that are undertaken by a limited liability company or other appropriate organizational structure, through a subsidiary company formed by the authority as authorized by this title; and (iii) the authority should be authorized to participate in public-private transmission projects and transfer transmission assets or any interest therein in connection with its participation in such a limited liability company or other appropriate organizational structure on such terms and conditions as the authority may negotiate.

§ 5. Subdivision 2 of section 1020-c of the public authorities law, as added by chapter 517 of the laws of 1986, is amended to read as follows:

2. The area of operations of the authority shall be the service area, provided that the authority or subsidiary company may own an interest in transmission assets that are located in whole or in part outside the service area.

§ 6. Section 1020-f of the public authorities law is amended by adding a new subdivision (g-1) to read as follows:

(g-1) (i) For purposes of this subdivision, the following terms have the meanings indicated:

1. "Subsidiary company" means a subsidiary company formed, wholly-owned and controlled by the authority in accordance with and subject to the business corporation law, the not-for-profit corporation law, the limited liability company law or the transportation corporations law.

2. "Transco master agreement" means a written agreement providing for the formation and operation of a limited liability company or other organizational structure to serve as a transco company and which provides for, among other things, the rights and obligations of members of such transco company.

3. "Transco ancillary agreement" means a written agreement, other than a transco project agreement, between the authority or subsidiary company and the transco company and/or members of a transco company, made in accordance with the transco master agreement, for the purpose of implementing the transco master agreement.

4. "Transco company" means an entity formed in accordance with a transco master agreement primarily for the purpose of engaging in the business of planning, constructing, owning, operating, maintaining, and expanding electric transmission facilities, systems and infrastructure serving the people of the state of New York.

5. "Transco project" means a project undertaken by the transco company in accordance with a transco master agreement.

6. "Transco project agreement" means a written agreement between the authority or subsidiary company and the transco company and/or members of a transco company, made in accordance with the transco master agreement, that relates to a specific transco project.

7. "Transmission assets" means: (A) all physical assets (including but not limited to electrical transmission lines, poles, towers and similar structures, conduits, substations, converter stations, transformers, conductors, insulators, switching devices, controls, breakers, buses, stations, rectifiers, regulators, emergency and protective equipment and devices, utility interconnections and other equipment used or necessary for the control, dispatch, receipt and delivery of energy by such facilities) used for the purpose of transmitting or delivering direct or

1 alternating current electric energy at voltages primarily of one hundred
2 kilovolts or higher to loads or interconnection points; and (B) all
3 associated (I) tangible and intangible property used to operate,
4 control, protect and maintain such assets, (II) real property rights for
5 lands and rights-of-way, sites, and places in which such assets are
6 situated or installed, and (III) legal and regulatory rights, authori-
7 zations, permits, and consents of any nature to own, occupy, construct,
8 use, operate and maintain, and receive or dispose of revenues from such
9 assets or lands on which such assets are situated, existing, owned,
10 leased, designed, used and operated.

11 (ii) Notwithstanding the provisions of any other law, including the
12 provisions of section one thousand twenty-i of this title, the authority
13 may 1. form a subsidiary company for the purpose of participating in a
14 transco company, 2. participate in the transco company by causing the
15 subsidiary company to become a party to a transco master agreement and
16 exercise the rights and perform the obligations of a transco company
17 member as may be provided for in a transco master agreement, and 3.
18 exercise the other powers and duties provided for by this subdivision.

19 (iii) Notwithstanding the provisions of any other law, in addition to
20 any other powers and duties granted to it under this title, the authori-
21 ty shall be authorized to:

22 1. participate in public/private partnerships to provide for the
23 means to construct, repair, replace, reinforce, modernize or expand the
24 state's electric transmission grid to ensure the safe and reliable
25 provision of electric service to the service area and the state's resi-
26 dents now and into the future;

27 2. exercise all of the rights and privileges associated with any
28 ownership interest in or organizer of the subsidiary company;

29 3. issue its bonds, notes and other evidence of indebtedness to
30 finance the operations of the subsidiary company, including the subsid-
31 iary company's participation in and obligations undertaken in connection
32 with a transco company;

33 4. lend, or otherwise transfer monies to the subsidiary company,
34 including the proceeds of the authority's bonds, notes, other evidence
35 of indebtedness and other authority funds;

36 5. receive monies from the subsidiary company, including monies that
37 result from the operation of the transco company;

38 6. as deemed feasible and advisable by the trustees, transfer to the
39 subsidiary company transmission assets that have been or are expected to
40 be used in projects undertaken by the transco company for such consider-
41 ation and on such other terms and conditions as the authority shall
42 negotiate;

43 7. receive from the subsidiary company or the transco company any
44 personal or real property;

45 8. enter into guarantee agreements in connection with the subsidiary
46 company's participation in the transco company;

47 9. enter into contracts and other forms of agreement with the transco
48 company, the subsidiary company and other members of the transco compa-
49 ny;

50 10. pledge or assign all or any portion of any interest in a transco
51 company;

52 11. transfer and receive all or any portion of any interest in a tran-
53 sco company;

54 12. sell, purchase, or otherwise transfer all or any portion of any
55 interest in a transco company on such terms and conditions as the
56 authority deems appropriate;

1 13. assign one or more employees to provide services to a transco
2 company for a specified period of time, provided that any such employee
3 shall continue to be an employee of the authority; and

4 14. dissolve or terminate the subsidiary company in accordance with
5 applicable law.

6 (iv) Notwithstanding the provisions of any other law, no trustee,
7 officer or employee of the state, or of any state agency, public author-
8 ity or public benefit corporation, shall be deemed to have forfeited or
9 shall forfeit such person's office or employment or any benefits associ-
10 ated therewith by reason of such person's acceptance of membership on,
11 or such person being an officer, employee or agent of, a subsidiary
12 company, or by reason of such person's provision of services to a
13 subsidiary company.

14 (v) The provisions of section one thousand twenty-cc of this title
15 shall be inapplicable to any transco master agreement, transco ancillary
16 agreement, or transco project agreement.

17 (vi) The provisions of section twenty-eight hundred seventy-nine-a of
18 this chapter shall be applicable to any transco master agreement to
19 which the authority or subsidiary company is a party, but shall be inap-
20 plicable to any transco ancillary agreement or transco project agreement
21 that otherwise satisfies the requirements of paragraph (a) or (b) of
22 subdivision one of such section provided that 1. a final or substantial-
23 ly negotiated form of such transco ancillary agreement or transco
24 project agreement, as the case may be, is annexed to a transco master
25 agreement that has become valid and enforceable in accordance with the
26 provisions of section twenty-eight hundred seventy-nine-a of this chap-
27 ter, and 2. in the case of a transco project agreement, the final
28 executed form of such transco project agreement is limited to a transco
29 project that was identified in such transco master agreement.

30 (vii) The provisions of title five-A of article nine of this chapter
31 shall be inapplicable to any disposal of property by the authority or
32 subsidiary company that 1. is otherwise authorized by this title, or 2.
33 is made in accordance with a transco master agreement that has become
34 valid and enforceable in accordance with the provisions of section twen-
35 ty-eight hundred seventy-nine-a of this chapter.

36 (viii) The provisions of paragraph (d) of subdivision one of section
37 one thousand twenty-s of this title and section three-b of the public
38 service law shall be inapplicable to the rates, services and practices
39 related to the transco master agreement and any actions undertaken by
40 the authority or subsidiary corporation in accordance with the transco
41 master agreement.

42 (ix) No acts or activities taken or proposed to be taken by the
43 authority or a subsidiary company pursuant to the provisions of this
44 subdivision, including the execution of a transco master agreement, and
45 the issuance of bonds, notes, or other obligations, shall be deemed to
46 be "actions" for the purposes or within the meaning of article eight of
47 the environmental conservation law.

48 (x) Notwithstanding the provisions of any other law, the authority and
49 the subsidiary company may only participate in a transco company that
50 constructs, repairs, replaces, reinforces, modernizes or expands trans-
51 mission assets, and may not participate in a transco company that
52 finances or constructs new electric generating facilities.

53 § 7. Severability clause. If any clause, sentence, paragraph, subdivi-
54 sion, section or part of this act shall be adjudged by any court of
55 competent jurisdiction to be invalid, such judgment shall not affect,
56 impair, or invalidate the remainder thereof, but shall be confined in

1 its operation to the clause, sentence, paragraph, subdivision, section
2 or part thereof directly involved in the controversy in which such judg-
3 ment shall have been rendered. It is hereby declared to be the intent of
4 the legislature that this act would have been enacted even if such
5 invalid provisions had not been included therewith.
6 § 8. This act shall take effect immediately.