STATE OF NEW YORK

7802

IN SENATE

January 11, 2022

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public service law, in relation to storm hardening and system resiliency plans

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

Section 1. Subdivision 29 of section 66 of the public service law, as added by section 2 of part A of a chapter of the laws of 2021 amending the public service law relating to storm hardening and system resiliency plans, as proposed in legislative bills numbers S. 4824-A and A. 3360-A, is amended to read as follows:

29. (a) Each electric corporation subject to section twenty-five-a of this chapter shall prepare and submit a climate change vulnerability study to the commission within eighteen months of the effective date of this act. The commission shall provide such study to the governor and the legislature. The climate change vulnerability study shall evaluate the electric corporation's infrastructure, design specifications, and procedures to better understand the corporation's vulnerability to climate-driven risks, and shall include, but not be limited to, adaptation measures to address vulnerabilities and any other information deemed necessary by the commission.

(b) Within sixty days from submission of a climate change vulnerability study to the commission, each electric corporation subject to section twenty-five-a of this chapter shall[~~, pursuant to regulation by the commission,~~] submit a climate resilience plan to the commission for review and approval. Each plan shall: (i) propose storm hardening and resiliency measures for the next ten years and twenty years, and shall explain the systematic approach the corporation will follow to achieve the objectives of mitigating the impacts of climate change to utility infrastructure, reducing restoration costs and outage times associated with extreme weather events, and enhancing reliability, as well as such other additional objectives the commission may require consistent with ensuring increased resiliency of utility infrastructure and overall reliability during extreme weather events; (ii) detail how the corpo-

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

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ration will incorporate climate change into its planning, design, operations, and emergency response; (iii) incorporate climate change into existing processes and practices, manage climate change risks and build resilience; [~~and~~] (iv) propose adjustments, as necessary, to how the corporation plans and designs infrastructure for the increasing impacts from climate change**; and (v) address each of the elements specified in paragraph (d) of this subdivision and any additional elements specified by the commission**. The commission shall adopt rules to specify any additional elements that must be included in a corporation's filing for review of climate resilience plans.

(c) Each subject electric corporation shall contemporaneously serve the climate resilience plan on the parties from its last rate case filed pursuant to subdivision twelve of this section.

(d) In its review of each climate resilience plan filed pursuant to this subdivision, **which shall be separate from a corporation's rate proceeding,** the commission shall, at minimum, consider:

(i) the extent to which the plan is expected to mitigate the impacts of climate change, reduce restoration costs and outage times associated with extreme weather events, and enhance reliability, including whether the plan examines areas of lower reliability performance;

(ii) the extent to which storm protection and hardening of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the corporation's service territory, including, but not limited to, coastal areas, flood zones, and rural areas;

(iii) the estimated costs and benefits to the corporation and its customers of making the improvements proposed in the plan, including considerations of equity in the plan as applied across the entire service territory, with particular attention paid to the costs and benefits in undergrounding transmission and distribution lines;

(iv) [~~the timeline~~] **a schedule** for [~~implementation of~~] **implementing each of the storm hardening and resiliency measures included in** the plan;

(v) whether the plan includes major performance benchmarks that measure the effectiveness of the implementation of the plan;

(vi) the estimated annual rate impact resulting from implementation of the plan during the first five years addressed in the plan;

(vii) the extent to which the plan considers a multi-pronged strategy appropriately tailored to addressing the impacts of climate change, reducing restoration costs and outage times and enhancing infrastructure reliability, including, but not limited to, vegetation management, improvements to system management practices, undergrounding of distribution and transmission lines, replacement of obsolete cables, wires and poles, automation and circuit reconfiguration, investing in infrastructure that supports the development of technologies that would improve response to extreme weather events and reduce restoration costs, and system resiliency through the deployment of distributed energy resources, and fortifying critical facilities;

(viii) the extent to which the plan identifies opportunities for coordination with municipalities, customer advocate groups, the independent system operator, the energy research and development authority, and other utility or telecommunication service providers; and,

(ix) the recommendations from the utility climate resilience working group established pursuant to paragraph (h) of this subdivision.

(e) No later than eleven months after a corporation files a climate resilience plan that contains all of the elements required by this

subdivision, and after a public hearing on the plan, which shall include a public forum at a physical location, attended by commission members or their designees to take in written or oral comment, the commission shall determine whether it is in the public interest to approve or modify the plan.

(f) At least every five years after approval of a corporation's climate resilience plan, [~~the~~] or more frequently upon a schedule determined to be appropriate by the commission, each corporation must file, for commission review, an updated plan that addresses each element specified [~~by commission regulation~~] in paragraph (b) of this subdivision. The commission shall approve, modify, or deny each updated plan pursuant to the criteria used to review the initial plan.

(g) [~~Each corporation shall make an annual filing to recover the corporation's climate resilience plan costs through a charge separate and apart from its base rates, to be referred to as the climate resilience plan cost recovery clause. If the commission determines that such costs are just and reasonable, in the public interest, and were prudently incurred, those costs will not be subject to disallowance or further reasonableness or prudence review except for fraud, perjury, or intentional withholding of key information by the corporation, or if the commission finds that the corporation has imprudently implemented the plan. The annual climate resilience plan costs may not include costs recovered through the corporation's base rates and must be allocated to customer classes pursuant to the rate design most recently approved by the commission. If a capital expenditure is recoverable as a climate resilience plan cost, the corporation may recover the annual depreciation on the cost, calculated at the corporation's current approved depreciation rates, and a return on the undepreciated balance of the costs calculated at the corporation's weighted average cost of capital using the last approved return on equity~~] The commission shall authorize each electric corporation to fully recover in the context of rate proceedings the costs associated with each project included in such corporation's climate resilience plan that is approved or modified by the commission, so long as such costs were prudently incurred. Each corporation may begin implementation of the climate and resilience measures in accordance with the schedule specified in its climate resilience plan once such plan is approved or modified by the commission. For capital projects that are placed into service and additional unrecovered expenses incurred prior to the base rates being reset in the first rate proceeding commenced by such corporation subsequent to the commission's approval or modification of the climate resilience plan, the company shall recover such costs through a "climate resiliency cost recovery" surcharge. The costs to be recovered through such a surcharge shall be detailed in a filing to the commission, and each corporation shall propose a method of allocating costs to customer classes in said filing. Such costs for capital projects in service may include an annual depreciation cost, calculated at the corporation's approved depreciation rates and a return on the undepreciated balance of the plant in service calculated at the corporation's approved weighted average cost of capital. In addition, all unrecovered expense balances, net of taxes, shall also earn carrying charges at the corporation's approved weighted average cost of capital. The commission may roll any unrecovered costs associated with such surcharge into base rates when the corporation's base rates are reset. The commission shall identify in any order approving or modifying a corporation's rate plan the resiliency and storm hardening component of the revenue requirement on a cost and/or percentage basis.

(h) Each corporation shall establish a utility climate resilience working group no later than one year after the effective date of this subdivision. Such working group shall advise and make recommendations to the corporation and the commission on the development and implementation of the corporation's climate resilience plan. The **corporation shall, in consultation with the department, include in the** working group [~~shall be comprised of~~] representatives from [~~the department, and municipal representatives~~] **municipalities**, customer advocacy groups, and energy and environmental advocacy organizations. The working group shall meet at least twice annually.

(i) Each corporation shall provide to the county executive or the chief elected official of a county for each county within its service territory the most recent approved copy of the climate resilience plan required pursuant to this subdivision. For the purposes of an electric corporation operating within the city of New York, such corporation shall provide the most recent approved climate resilience plan with both the mayor's office and emergency management office of the city of New York.

(j) The commission shall provide access to such climate resilience plans pursuant to article six of the public officers law.

(k) Beginning December first of the year after the [~~first~~] **second** full year of implementation of a climate resilience plan and [~~annually~~] **biennially** thereafter, the [~~commission~~] **corporation** shall [~~submit to the governor and the legislature~~] **file with the commission** a report on the status of [~~each corporation's~~] **its** activities to comply with the plan**, which report the commission shall, after review, submit to the governor and the legislature**. The report shall include, but is not limited to, identification of all storm protection and resiliency activities completed or planned for completion, the actual costs and rate impacts associated with completed activities as compared to the estimated costs and rate impacts for those activities, the estimated costs and rate impacts associated with activities planned for completion, and the governance, planning, and operational activities undertaken by the corporation in furtherance of the climate resilience plan.

(l) The commission shall promulgate any necessary rules and regulations to implement and administer the provisions of this subdivision.

§ 2. This act shall take effect on the same date and in the same manner part A of as a chapter of the laws of 2021 amending the public service law relating to storm hardening and system resiliency plans, as proposed in legislative bills numbers S. 4824-A and A. 3360-A, takes effect.