

# 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:

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

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

16 (b) Within sixty days from submission of a climate change vulnerabili-  
17 ty study to the commission, each electric corporation subject to section  
18 twenty-five-a of this chapter shall [ ~~, pursuant to regulation by the~~  
19 ~~commission,~~] submit a climate resilience plan to the commission for  
20 review and approval. Each plan shall: (i) propose storm hardening and  
21 resiliency measures for the next ten years and twenty years, and shall  
22 explain the systematic approach the corporation will follow to achieve  
23 the objectives of mitigating the impacts of climate change to utility  
24 infrastructure, reducing restoration costs and outage times associated  
25 with extreme weather events, and enhancing reliability, as well as such  
26 other additional objectives the commission may require consistent with  
27 ensuring increased resiliency of utility infrastructure and overall  
28 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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1 ration will incorporate climate change into its planning, design, oper-  
2 ations, and emergency response; (iii) incorporate climate change into  
3 existing processes and practices, manage climate change risks and build  
4 resilience; [~~and~~] (iv) propose adjustments, as necessary, to how the  
5 corporation plans and designs infrastructure for the increasing impacts  
6 from climate change; and (v) address each of the elements specified in  
7 paragraph (d) of this subdivision and any additional elements specified  
8 by the commission. The commission shall adopt rules to specify any addi-  
9 tional elements that must be included in a corporation's filing for  
10 review of climate resilience plans.

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

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

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

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

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

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

34 (v) whether the plan includes major performance benchmarks that meas-  
35 ure the effectiveness of the implementation of the plan;

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

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

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

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

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

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

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

13 ~~(g) [Each corporation shall make an annual filing to recover the~~  
14 ~~corporation's climate resilience plan costs through a charge separate~~  
15 ~~and apart from its base rates, to be referred to as the climate resili-~~  
16 ~~ence plan cost recovery clause. If the commission determines that such~~  
17 ~~costs are just and reasonable, in the public interest, and were prudent-~~  
18 ~~ly incurred, those costs will not be subject to disallowance or further~~  
19 ~~reasonableness or prudence review except for fraud, perjury, or inten-~~  
20 ~~tional withholding of key information by the corporation, or if the~~  
21 ~~commission finds that the corporation has imprudently implemented the~~  
22 ~~plan. The annual climate resilience plan costs may not include costs~~  
23 ~~recovered through the corporation's base rates and must be allocated to~~  
24 ~~customer classes pursuant to the rate design most recently approved by~~  
25 ~~the commission. If a capital expenditure is recoverable as a climate~~  
26 ~~resilience plan cost, the corporation may recover the annual depreci-~~  
27 ~~ation on the cost, calculated at the corporation's current approved~~  
28 ~~depreciation rates, and a return on the undepreciated balance of the~~  
29 ~~costs calculated at the corporation's weighted average cost of capital~~  
30 ~~using the last approved return on equity.]~~ The commission shall authorize  
31 each electric corporation to fully recover in the context of rate  
32 proceedings the costs associated with each project included in such  
33 corporation's climate resilience plan that is approved or modified by  
34 the commission, so long as such costs were prudently incurred. Each  
35 corporation may begin implementation of the climate and resilience meas-  
36 ures in accordance with the schedule specified in its climate resilience  
37 plan once such plan is approved or modified by the commission. For capi-  
38 tal projects that are placed into service and additional unrecovered  
39 expenses incurred prior to the base rates being reset in the first rate  
40 proceeding commenced by such corporation subsequent to the commission's  
41 approval or modification of the climate resilience plan, the company  
42 shall recover such costs through a "climate resiliency cost recovery"  
43 surcharge. The costs to be recovered through such a surcharge shall be  
44 detailed in a filing to the commission, and each corporation shall  
45 propose a method of allocating costs to customer classes in said filing.  
46 Such costs for capital projects in service may include an annual depreci-  
47 ation cost, calculated at the corporation's approved depreciation  
48 rates and a return on the undepreciated balance of the plant in service  
49 calculated at the corporation's approved weighted average cost of capi-  
50 tal. In addition, all unrecovered expense balances, net of taxes, shall  
51 also earn carrying charges at the corporation's approved weighted aver-  
52 age cost of capital. The commission may roll any unrecovered costs asso-  
53 ciated with such surcharge into base rates when the corporation's base  
54 rates are reset. The commission shall identify in any order approving or  
55 modifying a corporation's rate plan the resiliency and storm hardening  
56 component of the revenue requirement on a cost and/or percentage basis.

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

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

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

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

35 (l) The commission shall promulgate any necessary rules and regu-  
36 lations to implement and administer the provisions of this subdivision.

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