STATE OF NEW YORK

10472

IN ASSEMBLY

May 29, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Cunningham) -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to enacting the "build to need act"

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

Section 1. Short title. This act shall be known as and may be cited as the "build to need act".

§ 2. Legislative findings and intent. The legislature hereby finds that in order to achieve the targets set forth in the climate leadership and community protection act, zero-emissions vehicle sales targets, and regulations, including the advanced clean truck and advanced clean cars II rules, zero-emissions school bus mandate, and other relevant goals, the interests of the people of the state would be served by:

(a) expediting electric grid infrastructure upgrades to facilitate the charging of light-duty, medium-duty, and heavy-duty electric vehicles;

(b) aligning a proactive planning process for beneficial electrification with the current coordinated grid planning process for electric corporations;

(c) ensuring the full range of feasible distributed energy resource technologies, load management opportunities, and expected electrified end uses are incorporated into electric utility investment plans;

(d) lowering costs to customers through efficient planning, including consideration and deployment of non-wires solutions that reduce or eliminate the need for distribution system upgrades;

(e) ensuring meaningful benefits to communities most affected by large-scale proactive utility projects developed under this framework; and

(f) enhancing speed, flexibility, and ease of customer interconnections (including both loads and distributed generation).

§ 3. The public service law is amended by adding a new section 77-a to read as follows:

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

LBD14561-02-4

§ 77-a. Build to need act. 1. Within sixty days of the effective date of this section, the commission shall commence a proceeding to implement a grid planning process that shall direct electric corporations to:

(a) align planning under this section with existing planning processes, including the coordinated grid planning process implemented pursuant to the climate leadership and community protection act, to the extent feasible;

(b) provide annually to the New York independent system operator updated load projections consistent with the state's electrification and climate related policy mandates;

(c) use a planning horizon of at least ten years for transmission through substation-level investments and a planning horizon of at least five years for other distribution investments;

(d) proactively gather and incorporate data relevant to future electric loads from sources including but not limited to customers operating fleets, state and municipal departments of transportation or their equivalents, other entities that may reasonably be expected to have relevant information concerning location, type, magnitude, or timing of major future loads, available vehicle telematics data, and other sources of information as directed by the commission;

(e) consider customers' activities that may reduce, defer, or otherwise affect the need or extent of grid upgrades, such as customers' reasonably foreseeable load management activities, including but not limited to implementation of automated load management technologies, and deployments of distributed energy resources and ability to enter into flexible interconnections;

(f) identify system needs where the electric corporation, planning in accordance with the state's electrification and climate related policy mandates, finds (i) a reasonable expectation of new load in a specific area based on inputs including fleet electrification commitments, proximity to transportation corridors, ports, airports, other existing transportation or freight hubs and other relevant data sources that would substantiate the projections of new load and the associated timeline; and (ii) a reasonable likelihood of grid constraints that shall impair the electric corporations ability to serve the load absent a solution to address the system need in a timely manner; and

(g) where an electric corporation identifies a system need, such corporation shall develop solutions that proactively address such system need, and consider advanced technologies where appropriate and feasible.

2. (a) The commission shall develop a test for defining larger tier one solutions and smaller tier two solutions. Such test shall:

(i) be applied uniformly to all electric corporations, except where the commission determines such different criteria should apply to a given electric corporation because unique circumstances or hardships, or impracticability of applying the uniform test to such electric corporation exist;

(ii) prohibit electric corporations from segmenting solutions to avoid a tier one designation; and

(iii) specify criteria such as, but not limited to, solution cost as a percentage of the electric corporation's rate base, solution nominal voltage, solution wattage and solution type.

(b) The commission may update such test as appropriate to ensure the timely achievement of state electrification mandates and the efficient consideration of solutions development pursuant to this section.

(c) The commission shall establish separate requirements for tier one projects for which the electric corporation seeks approval under subdivision four of this section and tier two projects.

3. The commission shall develop a framework governing the use of advanced technologies as part of the solutions for which the electric corporation seeks approval under subdivision four of this section. Such framework shall: (a) define advanced technologies to include energy storage, demand response, automated load management, other distributed energy resources, and any other categories as determined by the commission. Such framework shall direct electric corporations to consider where appropriate and feasible at least one alternative technology to address the identified system need fully or partially; and

(b) such electric corporation shall demonstrate why advanced technologies were or were not included as part of the project. The commission may establish mandatory targets for deployment of advanced technologies, provide for earnings adjustment mechanisms associated with utilities' deployment of advanced technologies, and include other metrics and guidance as appropriate.

4. In approving tier one projects for which the electric corporation seeks approval under this subdivision, the commission shall require:

(a) electric corporations file with the commission a petition for approval. Such petition shall include a description of project need including data sources to substantiate need, explanation of alternatives considered, description of its community benefit plan as required in subdivision six of this section, projected costs and benefits, a proposed cost recovery method, and any other requirements as established by the commission. Further, such petition shall include an explanation of an electric corporation's reasonable efforts to obtain state or federal funding sources to offset electric corporation customer costs of the project. If the electric corporation does not seek state or federal funding sources, it shall explain why it did not seek such funding.

(b) render a decision on such petition within one hundred twenty days, or within the one hundred twenty day period, extend such time to render a decision by sixty days. Failure to render a decision within such timeline prescribed, shall deem such petition approved by operation of law; and

(c) to the extent an electric corporation's infrastructure deployment or other costs attributable to this section are not included in its current rate plan as of the effective date of this section, such electric corporation may recover the incremental revenue requirement associated with such costs through a surcharge mechanism until its base rates are reset. A surcharge mechanism may only be used to the extent necessary between the effective date of this section and the conclusion of the electric corporation's next rate case.

5. (a) All tier one projects for which the electric corporation seeks approval under subdivision four of this section shall include a community benefit plan. The commission shall develop a community benefit plan framework which shall:

(i) define the term "affected communities," which shall include communities in the vicinity of a tier one project as well as other criteria defined by the commission;

(ii) consider separate requirements applicable to disadvantaged communities within affected communities;

(iii) specify criteria that a reasonable percentage of solution benefits are demonstrated to be delivered to affected communities;

(iv) consider achievable, measurable workforce development programs and goals designed to expand high-quality job opportunities in affected communities;

(v) require such electric corporation provide benefits to affected communities; and

(vi) require a description of such electric corporation's past and planned efforts concerning community engagement and its history of incorporating an affected communities feedback into its solution or its willingness to incorporate an affected communities feedback.

(b) Reasonable and prudently incurred costs in the implementation of the community benefit plan shall be recoverable by such electric corporation as part of solution costs.

6. The commission is authorized to promulgate rules and regulations necessary to determine record keeping requirements for tier two projects, including:

(a) records demonstrating project need;

(b) analysis of the chosen solution by the electric corporation;

(c) alternatives considered;

(d) project costs and benefits; and

(e) any other requirements determined by the commission.

7. Within two hundred eighty days of the effective date of this section, electric corporations shall offer to customers, and update tariffs as necessary to enable both hybrid and flexible interconnections. For the purposes of this subdivision, hybrid interconnections include an interconnection, through a single application, of hybrid facilities. Such hybrid facilities shall include those composed of more than one device of different technology types for such production, storage, and consumption of electricity that are located on the same site and have a single point of interconnection. Further, for the purposes of this subdivision, flexible interconnections include electric corporation requirements to enable expeditiously energizing new load or interconnecting a distributed energy resource to an electric corporation's distribution system, including an agreement, supported by the use of software or hardware solutions such as automated load management, for curtailing the import and export of electricity from and to the distribution system.

8. Within one year of the effective date of this section, the commission shall establish average and maximum target time periods for load energizations and distributed generation interconnections. The commission may establish targets that vary depending on the size and complexity of such work, as well as factors beyond such electric corporation's control. Further, the commission shall establish a procedure for customers to report energization or interconnection delays to the commission. The commission shall establish an enforcement mechanism to ensure timely interconnection and energization, including but not limited to, earnings adjustment mechanisms with incentives and penalties.

9. The commission, in consultation with the New York state energy research and development authority, the department of environmental conservation, the department of transportation, the power authority of New York state, the Long Island power authority, and other agencies charged with administering electric vehicle programs, incentives, or procurements may include provisions for the use of automated load management in such programs, incentives, and procurements when they are determined to be cost effective. For purposes of this subdivision automated load management shall include any required hardware and software and also installation costs.

10. (a) Within one year of the effective date of this section, the commission shall adopt reporting requirements under this section for a time period determined by the commission but no less than five years from the effective date of this section. The reporting requirements shall include at a minimum:

(i) a summary of tier one and tier two projects deployed, including but not limited to a general categorization of projects, project costs, and for projects that entered service between the effective date of this section and the effective date of the electric corporation's subsequent rate plan, an identification of those projects not included in the electric corporation's prior rate plan;

(ii) a comparison of projected and actual loads, including projected loads attributable to electrification and a summary of projected electric corporation system upgrades and costs to serve such loads;

(iii) actual and estimated, as practicable, incremental costs and revenues attributable to tier one and two projects;

(iv) a summary of community benefit plan implementations and results, as applicable; and

(v) energization and interconnection timelines.

(b) To the extent an electric corporation's performance fails to meet corresponding target time periods, such report shall explain such failures and shall provide a strategy for meeting the targets in the future. The commission shall monitor each electric corporation's activities related to this section and take appropriate action as needed to address any deficiencies.

§ 4. This act shall take effect immediately.