STATE ENERGY PLAN AMENDMENT PROPOSAL MAY SIGNAL SUCCESSOR TO TAXPAYER MITIGATION

Hodgson Russ Renewable Energy and Municipal Alert
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On December 18, 2019, the State Energy Planning Board issued a Draft Amendment to the 2015 State Energy Plan. The first two parts of the proposed amendment enshrine goals adopted by the State in 2019 in its Climate Leadership and Community Protection Act (CLCPA): clean energy goals and specific climate targets. The third part describes the Sustainable Electric Generation Facility Cessation Mitigation Program, which is a continuation of an existing program designed to cushion the fiscal impact from power plant closings.

The State has previously acted to assist communities affected by power plant closures. The Electric Generation Facility Cessation Mitigation Fund, passed in prior years' State budgets using Regional Greenhouse Gas Initiative auction proceeds, provides compensation to counties, towns, cities, villages, school districts and special districts over a seven-year payment schedule. The fund provides 80% reimbursement of lost tax revenues for the first year, then decreases 10% per year to a 20% reimbursement in year seven, when the termination of a power generation facility caused a 20% or greater reduction in real property tax collections and/or payment-in-lieu-of-taxes (PILOTs) owed by a facility. That program terminates July 1, 2025, or when all funding has been expended.

The State Energy Plan Amendment proposal appears to portend shifting the cost of the program from the state budget using auction proceeds from the Regional Greenhouse Gas Initiative to a utility surcharge: "To account for the changes in energy policy since the onset of the Mitigation Program, the Public Service Commission will develop a process to consider a mechanism that can provide a stable source of funding for the Mitigation Program."

Numerous questions remain with respect to the implementation of a new mitigation program. For example, it is not clear if the new program will cover communities currently receiving assistance due to the closure of the Indian Point nuclear plant, or whether it would cover other communities that may have nuclear energy generating plants that may not be relicensed by the Nuclear Regulatory Commission in the early 2030s. Moreover, since the Commission's jurisdiction does not reach communities on Long Island, a question remains whether any utility surcharge funding such a mitigation plan could be used to support those communities.

Attorneys

Joseph Endres
Michael Hecker
Elizabeth Holden
Charles Malcomb
Paul Meosky
Daniel Spitzer
Jeffrey Stravino
Brianne Szopinski
Sujata Yalamanchili
John Zak
Henry Zomerfeld

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Also uncertain is whether communities affected by the closure of so-called "peaker plants" – which may be hastened by the Department of Environmental Conservation's recent adoption of emissions regulations targeted at those plants (and as discussed in our alert here) – would be eligible, as they likely would have been under the old plan.

Equally unclear is whether the NYSERDA-administered $22.7 million special assessment on gas and electric companies requested by the Governor in his 2021 budget may be used to fund this potentially large liability.

The final text of the Draft Amendment was published in the State Register on January 8, 2020, commencing a 60-day comment period.

To learn more about the State Energy Plan Amendment, the State's Green New Deal, or how the energy transition could affect your community's tax base, please contact a member of Hodgson Russ's Renewable Energy Practice at https://www.hodgsonruss.com/practices-renewable-energy.html.

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