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Microgrids and CHP A Regulatory Perspective

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Regulatory Overview

- Local, State and Federal Laws/Regulations
- Siting of CHP facilities
- Siting of Micro Grid and Steam Infrastructure
- Regulation of Ongoing Operation
 - Energy/Steam Production
 - Transmission and Distribution Infrastructure

Microgrids/CHP

- New York State's Public Service Law (PSL) regulates many aspects of the provision of electric, gas and steam services.
- Primary mission of the PSL is to guarantee that the public receive safe and adequate service at just and reasonable rates.

Microgrids/CHP

- Microgrids are not defined legal entities under New York State Law.
- Prior Public Service Commission (PSC) decisions provide some guidance on regulatory treatment of microgrids.
- More than likely that a microgrid will be characterized as an electric corporation.
- Ownership and project characteristics are important.

Microgrids/CHP

- Electric Corporation: a corporation owning, operating, or managing an electric plant.
- Electric Plant is: all real estate, fixtures and personal property used or to be used in connection with the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power.
- Includes any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

Microgrids/CHP

- Exemption from the definition of Electric Corporation
 - Electricity is generated or distributed by the producer solely for its own use or the use of its tenants and not for sale to others.
 - Electricity is generated solely from one or more co-generation facilities or distributed from a co-generation facility to users located at or near the project site.

Microgrids/CHP

- PSC will look at:
 - number and relationship of customers
 - length/size of infrastructure
 - crossing of public right of ways
 - need for local franchise
 - appropriateness of PSC regulation over the project

Microgrids/CHP

- If PSC determines that a microgrid is an electric corporation, the PSC may:
 - regulate rates
 - approve construction of facilities
 - inspect/audit records
 - approve transfers of ownership
 - establish accounting methods
 - limit indebtedness

Microgrids/CHP

- Lightened regulation
 - Specific terms will vary depending on the facts
 - PSC uses “realistic appraisal analysis”
 - Is the PSL inapplicable on its face – a plain read of the statute without proof or reasoning
 - Is it possible for the entity to comply with the requirement
 - Whether the requirement is necessary for the protection of the public interest or alternatively will adversely affect the public interest if it is applied

Microgrids/CHP

- Microgrids that use a combined heat and power source may also trigger PSC oversight as a “steam corporation”.
- PSL and PSC oversight extends to the manufacture, holding, distribution, transmission, sale or furnishing of steam for heat or power”.
- “Steam plant” includes all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with the generation, transmission, distribution, sale or furnishing of steam for heat or power.

Microgrids/CHP

- Exceptions to PSC oversight:
 - Where steam is made or produced and distributed by the maker
 - on our through private property solely for the maker's own use or the use of maker's tenant and not for sale to others.
 - to users at or near a project site.
 - solely for the use of its members by a non-profit cooperative corporation organized under the cooperative corporations law.

Microgrids/CHP

- A qualifying facility under federal or state law will be exempt from state regulation as an electric corporation.
- Small co-generation facilities that meet certain criteria are exempt facilities.
- Wires and pipes making up the microgrid – may qualify for exemption as well as “related facilities”.
- Qualifying facilities will be exempt from:
 - State regulatory oversight of rates, financial obligations and corporate organizational requirements.

Microgrids/CHP

Other Considerations

- Consumer Protections
- Provider of Last Resort

Microgrids/CHP Siting Considerations

- Permission from the local municipality - microgrids that require the use of public ways to lay distribution lines or pipes typically will need a local consent for real property rights.
- In New York City the City Department of Transportation requires a petition for revocable consent to “permit the use of public space for...steam pipes.”

Microgrids/CHP Siting Considerations

- If local consent to use public right of ways triggers the need for a franchise
 - Requires a competitive process for determining the franchise grantee
 - Allows for other service providers to bid against local developer
 - Requires approval from the PSC in the form of a Certificate of Public Convenience and Necessity
- **Permission from the PSC**
 - Although unlikely if a microgrid requires installation of a “major utility transmission facility”, a certificate of environmental compatibility and public need is required

Microgrids/CHP Siting Considerations

- Duplicative Facilities
- Environmental Laws –
 - DEP/DEC Permits
 - Air permitting and emission control requirements
 - CEQRA/SEQRA analysis
- Department of Buildings Permit
- FDNY Permit