



REGULATORY AND POLICY UPDATE

Quarter 4, 2020

This brief update is designed to share with S&C's clients where we see important government-related drivers for change in electricity distribution. This is not meant to be a complete list of all legislative and regulatory changes in the energy sector, but a place to highlight those moves S&C believes are most interesting in terms of tracking trends. Any newly introduced legislation referenced below is legislation S&C believes is likely to pass.

COVID-19 Impact on the Energy Industry

COVID-19 continued to have a significant impact on the energy industry in the U.S. and more widely.

In the U.S., final assessments for 2020 suggest annual electricity demand fell by approximately 2.5%. However, this doesn't tell the full story. Commercial and industrial demand was down 10% but was partially offset by increases in residential demand. Further, the rate of change across the U.S. was not uniform, with some states, such as New York and others in the Northeast, experiencing greater decreases, while states such as Texas saw a limited effect.

The position worldwide was similar. Overall, estimates suggest demand fell by between 2% and 5%, with China having the only major economy to see demand growth in 2020. In India, demand increased significantly in the last quarter, while the increase in the European Union was more sluggish.

Besides the impact on demand, the other recurring theme in Q4 was the continued challenges line crews faced given the need for social distancing. This was particularly evident in the U.S. in responding to a record-breaking 30 named storms and 12 land-falling storms.

UNITED STATES

The 2020 U.S. Elections

Joe Biden and Kamala Harris' defeat of Donald Trump and Mike Pence as president and vice president will have considerable impact on the direction and level of federal focus on the energy industry.

While Democrats lost several seats in the House of Representatives, they retained control there and picked up enough seats in the Senate to create a 50/50 power split, with Vice President Harris' tie-breaking vote giving Democrats control of both houses.

Even if the Democrats' thin margin in the Senate tempers Biden's legislative ambition, it will allow Majority Leader Charles Schumer to bring any bill to the floor for a full vote. This will also virtually ensure President Biden will receive confirmation for his cabinet nominations (including former Michigan Governor Jennifer Granholm for Energy Secretary and Secretary of North Carolina's Department of Environmental Quality Michael Regan for Environmental Protection Agency Administrator).

"At this moment of profound crisis, we have the opportunity to build a more resilient, sustainable economy—one that will put the United States on an irreversible path to achieve net-zero emissions, economy-wide, by no later than 2050."

Those are the first lines of President Biden's "Build Back Better" plan for energy and infrastructure. His goal is to focus on an array of infrastructure needs, but with climate and environmental justice woven throughout.

Biden's energy-sector focus is going to be about reducing energy's carbon footprint and creating jobs. In his plan, he calls out resilience, building a modern infrastructure, and creating a pollution-free power sector by 2035. The 50/50 split in the Senate will mean any Democratic lawmaker could derail a Biden-supported bill. However, S&C believes there are opportunities for bipartisan effort on infrastructure. Further, there are considerable opportunities for a Biden administration to advance some of these goals through executive orders and federal agencies.

California—At the end of September, Governor Gavin Newsom signed AB 841, establishing new programs around transportation electrification and energy efficiency. The bill contained three economic-recovery proposals focused on advanced energy and transport:

- Procedural changes to streamline the regulatory process for evaluating utility transportation electrification infrastructure programs
- Fast-tracked California Public Utilities Commission approval for two pending utility program applications
- A School and State Building Energy Efficiency Stimulus Program within utilities' energy efficiency (EE) portfolios

Specifically, this bill shifts the review protocol for utilities' electric-vehicle infrastructure projects from a case-by-case applications review process to an advice-letter process. It also specifies labor standards for all publicly funded electric-vehicle infrastructure programs, requiring at least one electrician on any installation crew to hold an Electric Vehicle Infrastructure Training Program certification.

Colorado—At the end of November, the state's Public Utility Commission issued a report in response to SB 19-236, which would direct an investigation around the costs and benefits of performance-based regulation (PBR). This report includes:

- A general determination on whether a transition to performance-based metrics regulation of a regulated utility would be net-beneficial to the state
- Actions the commission may pursue to guide the development of performance-based metrics regulation
- A list of types of future-litigated proceedings within which the report could be implemented
- A proposed timeline for transitioning to performance-based regulation

The report concluded that, "Going forward, the commission clearly sees value in the use of PBR as another key "tool in the toolbox" of the regulatory process. The rapidly changing utility and regulatory landscape will certainly provide ample opportunity for the use of well-designed and effective PBR programs. We are also happy to see that the utilities are, to a limited degree, seeing similar opportunities. It will be our intent to aggressively explore these opportunities in future proceedings."

Connecticut—In October, Governor Ned Lamont signed HB 07006, which requires the state's Public Utilities Regulatory Authority (PURA) to open an investigation into performance-based regulation for electric distribution companies. The bill also changes several utility regulations, including:

- Extending PURA's time to consider rate cases and utility company debt
- Requiring PURA to consider whether to tie rate recovery for certain executive and employee compensation to performance targets
- Disallowing rate recovery for PURA hearing costs
- Initiating a proceeding to consider interim rate decreases
- Increasing the limit on civil penalties for electric distribution utilities and gas companies that fail to comply with standards related to emergency preparation and service restoration

- Requiring customer bill credits and compensation for food and medication lost because of service outages that last beyond 96 consecutive hours without cost recovery
- Requiring reports to analyze storm preparation and responses
- Directing the state's Department of Energy and Environmental Protection (DEEP) to evaluate the state's reliance on wholesale energy markets administered by the Independent System Operator for New England and recommend alternatives
- Expanding DEEP's microgrid grant and loan program to cover resilience projects and prioritize projects that benefit vulnerable communities

Additionally, Gov. Lamont signed a bill to add an electric-vehicle charging infrastructure to a list of projects that may be funded within the state's environmental justice framework.

Hawaii—At the end of December, the Hawaiian Public Utility Commission (PUC) established a PBR framework for a “cost-of-service” approach that separates the profits of Hawaii's largest utility from capital investments. The new PBR rules provide financial incentives for Hawaiian utilities to achieve customer- and policy-oriented performance goals, such as increased savings for lower-income customers and the reduction of greenhouse gases. The PUC believes “customers will benefit from lower utility costs and see greater integration of renewable energy resources, while the companies will have the opportunity to improve their financial position through improved efficiencies and by earning rewards for exemplary and high-quality service in targeted areas.” While there were specific financial benefits identified for some of the performance areas, the reliability area only includes previously existing penalties for particularly poor performance.

Louisiana—Gov. John Bel Edwards signed an executive order in August setting a state goal of net zero greenhouse gas emissions by 2050, drawing swift praise from environmental groups. The order creates a climate initiatives task force that will include members

from state government, business, environmental justice, Indian tribes, academics, and other areas. A separate order established the position of a state resilience officer and directed all state agencies to work with that person toward protecting and restoring Louisiana's vanishing coast.

Michigan—Michigan Governor Gretchen Whitmer signed SR 0142 to encourage a study on alternative and innovative electric rate design options. The study should evaluate options based on factors such as customer charges, fixed charges, demand charges, time-of-use rates, standby charges, system-access charges, and other regulatory mechanisms to provide equitable recovery of utility-revenue requirements from customers adopting new energy technologies and to address concerns regarding cross-subsidy issues. The study should be completed by October 31, 2021.

The governor also signed SR 0143 to encourage the state's Public Service Commission to study reliability, interconnection, and grid-integration issues related to distributed energy resources (DERs). The bill directs the commission to coordinate with electric utilities and other parties for data collection, modeling, and analysis to study the capacity for, and constraints to, integrating additional DER into the electric grid and technology and operation options to mitigate reliability impacts and maximize customer and system benefits in the state. These results should be shared by December 2022.

Maine—There is a growing movement for the state to purchase the transmission and distribution infrastructure owned by Central Maine Power and Versant Power (formerly Emera) and create the Maine Power Delivery Authority, a nonprofit that would operate it and be directly accountable to the public. A bill (L.D. 1646) passed out of committee. It calls for a task force to develop a business plan and a risk-reward analysis and answer essential operational questions. These questions include addressing how much it would cost to upgrade Maine's aging grid and how a project like this might be financed. The task force will also consider a scenario in which one of the state's large private utilities would go up for sale on its own,

and the state's existing consumer-owned utilities would pool their resources to purchase it.

Nevada—Nevada Governor Steve Sisolak released the Nevada Climate Initiative Strategy document on December 1. The strategy recommends 17 policies and exploring a range of other issues with the goal of zeroing out carbon emissions within the next three decades. For the 17 core policies analyzed in the report, the state established a framework that looked at each recommendation using four metrics: a policy's potential for decreasing emissions, climate justice considerations, economic implications, and the legal feasibility of implementing a policy. As with most carbon-reduction plans across the globe, Nevada's strategy rests on electrification. The strategy aims to strip carbon emissions from electricity generation while electrifying the transportation (and eventually building) sectors.

New Jersey—In October, officials from New Jersey's Department of Environmental Protection called for a ban on gas car sales by 2035, a move that would make the state the first outside California to enact such a policy. The proposal came as part of an official road map that would allow the state to reach its goal of 80% carbon dioxide reductions by 2050. The proposal recommended regulators and economic development officials should "facilitate a complete transition away from gasoline-powered vehicles" by that date. The office of New Jersey Gov. Phil Murphy did not specifically endorse this plan, but stated in a press release the road map is "a call-to-action for all of us in government and in New Jersey to roll up our sleeves and craft the next generation of climate-focused laws and policies."

New York—On October 15, 2020, the commission issued an order approving the Clean Energy Resources Development and Incentives Program (Build Ready Program) proposed by the New York State Energy Research and Development Authority (NYSERDA) to fast-track utility-scale renewable energy development. The order directs NYSERDA to file an implementation plan that includes the procedures and protocols for establishment and transfer of Build-Ready sites by

January 13, 2021. This program is a key element of implementing the goals laid out in the Climate Leadership and Community Protection Act that include requiring the Department of Public Service to establish a program to increase the use of renewable energy in the state from 50 percent to 70 percent by 2030 and increase the use of offshore wind from 2,400 MW by 2030 to 9,000 MW by 2035.

AUSTRALIA

Distribution utilities in Victoria publish updated revenue proposals—In December, the five distribution network utilities in Victoria published updated proposals on revenues and investment in their networks for the period from 2021–2026.

The proposals come in response to draft decisions published by the Australian Energy Regulator (AER) in September, under which overall revenues would drop by between 6% and 14% in real terms from those provided to the five utilities from 2016–2021.

Despite this reduction, at approximately A\$11 billion (US\$8.52 billion), the revised revenue proposals would still represent a significant level of investment in the distribution networks in Victoria. Among the areas of focus, the proposals highlighted the companies' spending plans with respect to network reliability as well as how they are preparing for the energy transition. Approximately A\$1.8 billion (US\$1.39 billion) is earmarked for replacing aging assets, A\$700 million (US\$542 million) for network growth, and A\$230 million (US\$178 million) for the integration of DER.

The AER is due to publish its final decision in April 2021, ahead of the start of the next regulatory period from July.

CANADA

Canada's Energy Future 2020—In November, the Canadian Energy Regulator published a report titled Canada's Energy Future 2020: Energy Supply and Demand Projections to 2050. The report

explores how energy futures might unfold for Canadians based on future trends in technology, energy and climate policies, markets, and the structure of the economy. Under its “Evolving Scenario,” Canada’s domestic fossil-fuel consumption peaked in 2019 and is forecast to be 12% lower by 2030 and 35% lower by 2050. Electricity’s share of end-user demand is forecast to increase from approximately 16% presently to more than 27% in 2050 in the “Evolving Scenario,” when half of all passenger-vehicle sales are forecast to be electric vehicles.

GREAT BRITAIN

RIIO-2 decisions—In December the British energy regulator, Ofgem, published key decisions for the RIIO-2 price controls.

First, it published its Final Determinations for the three British electricity transmission, one gas transmission, and eight gas distribution utilities for the period 2021 to 2026. It has allowed a total funding package across all sectors of £30 billion (US\$39.9 billion). Of this, £11 billion (US\$14.6 billion) is available in upfront funding for the electricity-transmission businesses. This is a substantial increase (20%) from the £25 billion (US\$33.3 billion) in the draft determinations.

Key areas of focus in the decision are decarbonization, reliability, and innovation. Ofgem is making up to £10 billion (US\$13.3 billion) available for future green energy projects where the business cases are well-justified. It is retaining incentives to drive improvements in reliability and has included £660 million (US\$878 million) of innovation funding.

Ofgem has also published its decision on the methodology for the RIIO-2 price controls in electricity distribution, which will apply from 2023 to 2028, with utilities due to submit their initial draft filings in July 2021. Key areas of focus include reliability, decarbonization, and the transition of distribution utilities to Distribution System Operator (DSO)-type roles.

On reliability, Ofgem notes “we want [Distribution Network Operators] to invest in their infrastructure or use flexibility to ensure even short interruptions are kept to a minimum and improve service to those who are most susceptible to experiencing a power cut.” It will introduce a new minimum guaranteed standard on short interruptions (momentary outages), and distribution companies will have to pay compensation to customers when they fail to meet the standard.

On decarbonization, Ofgem is introducing a new Net Zero uncertainty mechanism to allow utilities to apply for additional funding for projects that support the country’s carbon-emissions targets. It’s introducing both new financial incentives and license requirements on the utilities’ DSO activities.

INDIA

Importance of reliability highlighted in electricity-sector report—In October, a report published jointly by the National Institution for Transforming India (NITI Aayog), the Rockefeller Foundation, and Smart Power India highlighted the present performance levels of its state-owned distribution companies (DISCOMs). Entitled “Electricity Access in India: Benchmarking Distribution Utilities,” the report was based on a study in 10 states and set out a range of proposals to improve the performance of those companies.

The report highlighted India’s considerable achievements in increasing electricity connections and strengthening infrastructure. At the same time, it recognized ongoing challenges with respect to quality of supply (particularly in rural areas) and the financial positions of the DISCOMs.

Among the key report conclusions was reliability is critical “to harness the true potential of electricity for driving rapid economic growth and social development.” Consequently, among its eight key recommendations is the need for “data-driven planning” for future network investment with “a focus on improving reliability and quality of supply.”



The report is published at a time when India is looking at a range of ways to support grid developments, including facilitating an increasing role for new technology and digitalization and enabling a greater role for the private sector.

NEW ZEALAND

Regulator publishes its assessment of Aurora Energy's application for additional funding—In November, the Commerce Commission, New Zealand's competition, consumer, and regulatory agency, published its assessment of an application from network utility Aurora Energy for additional funding. Aurora's application sought a customized settlement for its pricing and reliability standards to be set for the period from April 1, 2021, to March 31, 2024.

In its assessment, the commission proposed allowing Aurora to recover NZ\$523 million (US\$379 million) over the longer period of 5 years, from 2021 to 2026. This was NZ\$86 million (US\$62 million) less than requested but would still allow the company to significantly increase its network investment. Further, it set unplanned outage targets at a level that broadly reflects Aurora's performance over the past five years. The company will face penalties for failure to meet the targets but could also earn rewards for outperformance. The commission noted its proposal would mean customers should expect reliability to stabilize before improving over time. A final decision is due in March 2021.



S&C ELECTRIC COMPANY

100-G508

February 8, 2021

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