

New York Extends COVID-19 Restrictions on Utility Activities

On April 16, 2020, New York Governor Andrew M. Cuomo announced an extension through May 15, 2020, of the executive order *New York State on PAUSE*, as the state grapples with more than 250,000 cases of coronavirus. The original executive order (issued March 20), among other things, implemented social distancing requirements, including the closure of all nonessential businesses. The governor in coordination with Empire State Development (ESD), the Department of Public Service (DPS), and the Public Service Commission (PSC) have provided guidance and imposed requirements on utilities operating within the state.

Public and private utilities, including but not limited to power generation, fuel supply, and transmission, are all considered essential businesses. Utilities are expected to continue operating and are not subject to the in-person restrictions required by *New York State on PAUSE*. However, the Department of Health continues to urge even essential businesses to maintain a clean and safe work environment and follow social distancing measures to the extent possible.

Similarly, existing utility construction may proceed because it is considered essential. Personnel working at construction sites are required to maintain an appropriate social distance and follow cleaning/disinfecting protocols. ESD, the umbrella organization for the New York State Urban Development Corporation and the New York Job Development Authority, released specific guidance to essential businesses in response to the governor's executive orders. As it pertains to the energy industry, ESD determined that the following construction and projects are essential:

Utility operations and maintenance activities for:

- Existing power generation;
- Existing fuel supply;
- Utility-scale new power generation for projects with an in-service date of September 1 or earlier;
- Transmission and distribution infrastructure;
- Ensuring safe and reliable service to customers.

Energy construction activities related to:

- Existing or expanding grid or other critical infrastructure, including for service to transit facilities, health care facilities, affordable housing, and homeless shelters;
- New renewable generation or energy storage necessary to the continued operation of critical infrastructure.

New power generation, new energy storage, and new construction, in addition to energy efficiency in existing buildings, are all considered nonessential and are therefore subject to workforce reduction. Further, work may be undertaken on an emergency basis to the extent necessary to make a construction site that must be shut down a safe site.¹

The DPS and PSC have also taken measures in response to Governor Cuomo's directives. On March 13, 2020, the DPS announced that it would immediately work with utilities across the state to ensure that households affected by the COVID-19 outbreak would not have their power shut off. The DPS has previously asked utilities for more lenient repayment options in the aftermath of Superstorm Sandy, during the 2014 Polar Vortex, and during the 2008 financial crisis. The state's major electric and gas utilities all committed to suspend disconnects for customers impacted by COVID-19 and facing financial hardship. Con Edison, for example, announced that service will not be shut off for non-payment, new late-payment fees will be waived, and meter readings will be



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suspended in light of the pandemic.

The DPS has temporarily suspended mail and hand-delivery of paper filings to its offices, requiring filers to become registered users of its Document and Matter Management System that is accessible online.² Otherwise, the DPS and PSC are continuing their operations. The PSC held its most recent regular session on April 23, 2020, via webcast only due to the potential community spread of COVID-19.

The PSC is granting requests for extensions and cancellation of evidentiary hearings in light of the COVID-19 outbreak on a case-by-case basis but has indicated that not every request will be granted. For instance, in a case involving the application of Deepwater Wind South Fork, LLC for a certificate of environmental compatibility and public need for construction, the assigned administrative law judge denied a request to postpone a telephonic conference. Also, hearing examiners have denied a request by the New York State Department of Environmental Conservation (DEC) to delay the filing of direct testimony in a case involving Mohawk Solar LLC's application for a certificate of environmental compatibility and public need for construction of a solar electric generating facility in Montgomery County. The hearing examiners found that the "DEC Staff failed to provide any detailed information about how the State's stay-at-home directive has impeded compliance with the schedule" and that all parties to the case and the examiners "are experiencing disruptions due to current events." Therefore, parties to such proceedings should be careful to provide sufficient detail on the impact from the COVID-19 pandemic to justify a request for an extension or adjournment in PSC matters.

Governor Cuomo also announced that he will coordinate with the governors of New Jersey, Connecticut, Pennsylvania, Delaware, Rhode Island, and Massachusetts to determine when to reopen their states and to restore the economy. The decisions on how long to remain "paused" and when to reopen will undoubtedly affect public utilities. While public utilities are uniquely situated as providing essential services, the decisions made by policymakers in determining how best to confront the COVID-19 pandemic will have significant consequences on public utilities and the energy industry as a whole.

¹ A link to ESD's frequently asked questions in response to recent executive orders is available [here](#).

² Information on becoming a registered user to file documents with the DPS is available [here](#).