REGULATORY & POLICY UPDATE

QUARTER 2
2023

This brief update is designed to share with S&C's clients. It describes 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.

THIS QUARTER'S TREND: THE EVOLUTION OF PERFORMANCE-BASED REGULATION

Grids face a range of challenges from threats posed by climate change, mandates to enable decarbonization, and increased demand to support vehicle electrification, all while minimizing the impact of power system outages. As a result, regulation is evolving to support utilities' changing needs. Across a range of U.S. jurisdictions and beyond, we are witnessing a renewed focus on the development or reform of performance-based mechanisms. These mechanisms are targeted at achieving a range of outcomes, including improved customer satisfaction, faster and more efficient grid connections, support for renewable generation connections, and electric-vehicle rollouts. Underlying all the other efforts, regulations are supporting grid reliability and resilience, which will be crucial to supporting customers' needs as our grid reliance grows.

United States

Federal — The U.S. Department of Energy extended the application window for distributing $942 million available under the Formula Grant Program. For states and territories, the department extended the date from March 31 to May 31, while extending it for Native American tribes to August 31. The funding, available through the Infrastructure Investment and Jobs Act, is to be used on initiatives to prevent outages and improve grid resilience. The extension provides more time to put forward funding cases for fiscal years 2022 and 2023.

The application processes closed for the first round of the three programs that make up the Grid Resilience Innovation Partnership program. Established by the Bilateral Infrastructure Law, the programs collectively offered approximately $3.9 billion in funding for 2022 and 2023. Subsequent rounds of funding will be made available in future years as part of an overall package of about $10.5 billion.

In May, the U.S. Department of Agriculture (USDA) launched two programs under the Inflation Reduction Act that collectively provide approximately $11 billion in grants and loan opportunities to support clean energy investment. The Empowering Rural America program makes $9.7 billion available to rural electric cooperatives to make energy efficiency improvements and to purchase, build, or deploy renewable-energy, zero-emission systems. The Powering Affordable Clean Energy program provides $1 billion to a wide range of eligible entities to finance renewable-energy projects. In the first stage, the USDA is inviting "Letters of Interest" from potential applicants.

The Department of Energy published details of the insights it gained from a series of its stakeholder engagement sessions. The sessions focused on the use of the Defense Production Act to accelerate domestic manufacturing and the adoption of clean-energy technologies. Among the issues raised were support for "whole of government approaches," prioritizing disadvantaged communities, and supporting domestic production with subsidies and/or tax incentives. A decision on the use of the approximately $500 million in funding was expected soon.

Connecticut — In April, the Connecticut Public Utilities Regulatory Authority issued a final decision on the development and adoption of Performance Based Regulation (PBR) for electricity distribution companies. The document established four key goals for PBR:

- Excellent operational performance
- Public policy achievement
- Customer empowerment and satisfaction
- Reasonable, equitable, and affordable rates

The authority also detailed nine priority outcomes linked to these goals that included providing a reliable and resilient electric service, social equity, and quality customer service. It is now requiring development of regulatory mechanisms in Phase 2 of the proceedings to drive these outcomes.

Louisiana — In April, the Louisiana Public Service Commission published draft rules establishing guidelines and requirements for all utilities under its authority to develop grid-resilience plans. Among the required plan elements are a risk assessment with supportive quantitative risk modeling, a vulnerability assessment, proposed funding and financing, and performance metrics. Under the draft rules, each utility would be required to file its initial plan no later than December 31, 2024.

Massachusetts — Senate Bill 2091 was introduced to bolster energy system planning in support of climate transformation. The bill would create a Department of Energy Transformation Planning responsible for the development and implementation of long-term distribution system plans. The first 10-year plan would be issued no later than December 31, 2023, and be updated every subsequent three years.

Among the key areas of focus, the plans would identify cost-effective solutions to improve reliability and resilience. Electric distribution and transmission utilities would be required to furnish the information the department requests to develop and update its plans and to respond to the needs the plans outline by incorporating them into their rate cases or grid-modernization proceedings.

Michigan — In April, the Michigan Public Service Commission released the Final Status Report of its MI Power Grid initiative. Launched in 2019, the initiative focuses on engaging customers, integrating emerging technologies, and optimizing grid investments and performance.

As part of the commission's work, service quality and reliability standards were updated and new integrated resource planning requirements were put in place. Alongside its Final Status Report, the commission issued an order initiating a Financial Incentives and Disincentives workgroup. The group's initial focus is on improving the reliability and resilience of the electric distribution grid. The group must report on its findings by December 31, 2023.

Ohio — First Energy's three electric utilities, Ohio Edison, Cleveland Electric Illuminating Company, and Toledo Edison, filed their Electric Security Plans (ESPs) with the Public Utilities Commission of Ohio. The ESPs outline the companies' planned investment in the distribution system over an eight-year period from June 1, 2024, through May 31, 2032. The plans include First Energy's $626 million Grid Modernization II proposal, which was submitted in July 2022 and is pending the commission's approval; storm-restoration work; and energy-efficiency programs. Altogether, the plans contain a significant focus on reliability and customer-experience improvement.

Puerto Rico —The U.S. Department of Energy announced additional details on the Puerto Rico Energy Resilience Fund. Following a Request for Information issued in February 2023, the department announced it will conduct an accelerated funding round through an open Request for Proposals, with potential applicants including local government, non-profit organizations, private industry, and public entities. In total, $1 billion in funding will be available, with the first round due to open in summer 2023.

AUSTRALIA

Regulator updates incentive schemes and guidelines for network utilities — In April, the Australian Energy Regulator published a final decision on incentives schemes to apply to capital expenditure, operating expenditure, and the service targets that include network reliability for all regulated gas and electricity network utilities. The decisions largely reinforce the continued use of existing mechanisms. This includes the key components of the Service Target Performance Incentive Scheme, which sets incentives to maintain and improve network service performance with financial rewards for beating targets and penalties for declining reliability.

CANADA

Ontario regulator holds second session on distributor resilience — On April 25, the Ontario Energy Board (OEB) held the second of its two stakeholder sessions on distribution resilience, responsiveness, and cost efficiency. The session focused on proposals to enhance distributor capabilities, including the scope for collaboration between utilities and potential adjustments to rate-setting to support required investment. The OEB has since been considering feedback and refining its proposals. A report was due to be delivered to the energy minister on June 30.

Interactive system reliability dashboard launched in Ontario — Using distributor data from annual yearbooks and scorecards, OEB staff created an interactive dashboard that shows reliability performance for the industry and for individual utilities. This provides stakeholders with a benchmarking tool to compare the performance of local distribution companies. They also made a broader dataset available as part of their Open Data Inventory.

GREAT BRITAIN

Ofgem initiates review of framework for future regulation —British energy regulator Ofgem launched a consultation on changes to the performance-based regulatory framework. The consultation addresses specifically the RIIO rate-setting process that determines utility investment in both the distribution and transmission grids. The review's key driver is the need to upgrade the electricity networks to support the volume of low-carbon assets required to meet the UK's net-zero targets. Among the areas being reviewed are the timing of rate-case settlements, the process by which investment requirements are identified, and the balance between which components are determined ex-ante (upfront) or ex-post (once investment is made). Ofgem hopes to reach a decision on framework changes by early autumn 2023.

Ofgem consults on local energy institutions and flexibility markets — Ofgem is consulting on some important changes in local energy institutions, governance, and related flexibility markets to help ensure a faster transition to net zero. The key elements of Ofgem proposals are to:

- Introduce new Regional System Planners (RSPs) to ensure accountability for regional energy system planning and consideration of trade-offs between energy vectors
- Assign market facilitation of flexible resources to a single independent entity with sufficient expertise and capability
- Keep real-time operations within the electricity distributors, ensuring clear accountability for network reliability and safety

Ofgem favors a new independent Future System Operator to take on the proposed RSP and flexibility market facilitation roles, although there are other options. These proposals, if adopted, would have some significant impacts on the British electricity distributors because they would have shared responsibilities for system planning and would have to plan within the confines of a broader regional plan the RSPs set.