

Energy, Utilities, Telecommunications & Transportation Law

The newsletter of the Illinois State Bar Association's Section on Energy, Utilities, Telecommunications & Transportation Law

Recent legislation impacting Illinois solar developments

BY JONATHAN LA PHILLIPS

Three pieces of 2018 legislation impacted solar development in Illinois. By incentivizing 3,000 megawatts of renewable development through solar energy credits, the Future Energy Jobs Act has spurred solar development. Attorneys throughout

the state, especially in rural areas, may have clients with land targeted by solar developments. This article summarizes each of these recent pieces of legislation.

Continued on next page

Recent legislation impacting Illinois solar developments
1

NextGrid: Illinois' utility of the future study
1

NextGrid: Illinois' utility of the future study

BY GERARDO J. DELGADO

What will the grid of the future look like? It certainly involves the integration of distributed energy resources, leveraging smart devices, and the connectivity of electric vehicles. But how will these innovations and others impact our power system, and are we ready for these deployments? Additionally, how can

infrastructure investments be made in a manner in which they not only satisfy today's consumer's expectations but also supports fiscally and socially responsible decision-making? These are just some of the questions the country faces in light of the rapidly evolving technologies that are disrupting the utility industry and driving

the demand for renewable energy and energy efficiency.

Illinois stakeholders are no strangers to proactively evaluating and planning how the state should respond to the evolution of the power system. In fact, Illinois is a leader in grid modernization efforts in

Continued on page 3

Recent legislation impacting Illinois solar developments

CONTINUED FROM PAGE 1

Pollinator Friendly Solar Act

The Pollinator Friendly Solar Site Act, Public Act 100-1022, became effective August 21, 2018. Its end goal is to provide a habitat for pollinating insects and wildlife while reducing runoff and erosion in agricultural areas. This legislation creates a voluntary standard for deeming solar projects “pollinator-friendly.” To reach the standard, the solar site must reach a certain score, as dictated by a scorecard provided by the Illinois Department of Natural Resources. If the project’s score is 70–84, then it will meet “Pollinator Standards.” Sites with scores above 85 will be deemed to provide an “Exceptional Habitat.”

Solar Developments Get AIMAs

Another recent development concerns solar installations of 500 kilowatts or greater. It requires these developments to develop and file agricultural impact mitigation agreements (“AIMAs”) with the Illinois Department of Agriculture. Public Act 100-0598. AIMA requirements already exist for energy infrastructure like pipelines, transmission lines, and wind farms. The recent solar AIMA legislation requires solar projects with capacities of 500 kilowatts or greater to compensate owners for impacts to agricultural use such

as broken drain tile, to provide landowners indemnification, to decommission projects and remove structures after the installation is non-operational, and to return the land to a condition suitable for agricultural production when the installation is no longer operational. This Act was effective on June 29, 2018.

Solar Developments Subject to a Specific Property Tax Regime

The final piece of legislation, Public Act 100-0781, amends the Property Tax Code. It concerns property taxes for land hosting commercial solar developments. It requires the owner of the solar project to pay property taxes based on the nameplate capacity of the development. The property tax rate is \$218,000 per megawatt of nameplate capacity. However, the legislation figures in depreciation of the installation’s equipment. In the event that the land reverts to agricultural use, the property will return to its farmland assessment value upon project decommissioning and removal. ■

1. See, e.g. 505 ILCS 147/1, et seq (wind farms). The Department of Agriculture has examples of each type of AIMA on its website. *Agricultural Impact Mitigation Agreements*, Ill. Dept. of Agriculture, available at, <https://www2.illinois.gov/sites/agr/resources/aima/pages/default.aspx>.

Recent legislation impacting Illinois solar developments

CONTINUED FROM PAGE 1

many regards. For instance, GridWise Alliance recently ranked Illinois second on its Grid Modernization Index for the state’s coordination of policy, consumer, and utility action.¹ The Future Energy Jobs Act (FEJA) and the rulemaking order issued by the Illinois Commerce Commission (ICC) to establish regulatory accounting treatment for cloud-based computing solutions were spotlighted as proactive methods to establish mandates, incentives, and a pathway to move utility offerings

toward a service oriented model.²

As highlighted, FEJA is currently a significant factor driving the state’s evolution of its energy landscape. The bipartisan legislative action signed into law in 2016 not only bolsters Illinois’ Renewable Portfolio Standards but also calls for building 4,300 MW of new solar and wind power by 2030 and requires the state’s largest electric utilities to enhance customer energy efficiency programs. Before FEJA, Illinois was still

Energy, Utilities, Telecommunications & Transportation Law

This is the newsletter of the ISBA’s Section on Energy, Utilities, Telecommunications & Transportation Law newsletters are free to section members and published at least four times per year. Section membership dues are \$30 per year.

To subscribe, visit www.isba.org/sections or call 217-525-1760.

OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS

Jonathan L. Phillips
Harry L. Dubnick

PUBLICATIONS MANAGER

Sara Anderson
✉ sanderson@isba.org

ENERGY, UTILITIES, TELECOMMUNICATIONS & TRANSPORTATION SECTION COUNCIL

Jonathan L. Phillips, Chair/Newsletter Editor
Sameer Ghaznavi, Vice-Chair
Harry L. Dubnick, Secretary/Associate Editor
Freddie L. Greenberg, Ex-Officio/CLE Coordinator
John D. Albers
Eric Bramlet
Charles Y. Davis
Guy C. Hall
Daniel A. LaKemper
Ellen J. Schanzle-Haskins
Christine G. Zeman
Daniel R. Saeedi, Board Liaison
Kimberly A. Furr, Staff Liaison
Timothy J. Storm, CLE Committee Liaison

DISCLAIMER: This newsletter is for subscribers’ personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

at the forefront of the energy space with the enactments of the Electric Service Customer Choice and Rate Relief Law, which granted consumers the right to choose their electricity supplier, and the Energy Infrastructure Modernization Act, which availed investment in smart meters and other grid-hardening infrastructure improvements. Under these authorities and others, energy stakeholders in both the public and private sector have worked together to assess and strategize the modernization of the power system to minimize risk and ensure a reliable and resilient grid now and in the future.

To leverage Illinois' latest energy policy and stakeholder collaboration in grid modernization, the ICC passed a forward-thinking resolution in 2017 that launched Illinois' utility of the future study known as NextGrid. The study serves as a tool to address the many issues, factors, and potential solutions to grid modernization, and optimize the power system of the 21st Century and beyond.

What Is a Utility of the Future Study?

The phrase utility of the future study gained notoriety when the Massachusetts Institute of Technology (MIT) used it to brand its investigation on how the provision and consumption of electricity services in the United States and different parts of the world are likely to evolve over the next 10 to 15 years.³ Moreover, through a consortium of leading stakeholders, MIT addressed the emerging issues and barriers stifling the evolution of the power sector and provided a neutral framework from which to evaluate the economic, regulatory, and technological impacts of the ongoing evolution of the energy industry to ultimately encourage reform.⁴ In addition to Illinois, other states have initiated similar studies such as Power Forward in Ohio and the e21 Initiative in Minnesota.

What Is NextGrid?

NextGrid is a grid modernization study that aims to serve as a resource for the public, legislators, regulators, and Illinois utility participants to evaluate the state's current energy landscape, the factors

driving the power system to evolve, and the potential opportunities and growth areas to ensure a future cost-effective, safe, reliable and resilient electricity system. The study is a non-docketed proceeding, and no Commission Order will be issued upon its commencement.

UIUC, who serves as the NextGrid Lead Facilitator, helped structure and define the scope of the study. The following seven working groups were created to explore key topics in grid modernization: New Technology Deployment and Grid Integration; Metering, Communications and Data; Reliability, Resilience and Cyber Security; Customer and Community Participation; Electricity Markets; Regulatory and Environmental Policy Issues; and Ratemaking. The Lead Facilitator also monitored and guided the working groups.

In addition to UIUC's oversight, each working group was led by at least one independent subject matter specialist and held at least four meetings featuring expert presentations and group discussions with participants representing local and national stakeholders from both the public and private sectors. The working groups explored various perspectives, critical questions and elements of their respective topic. For instance, with respect to Data, questions like: "who owns the data?," "what should be the frequency of collection?," and "what are the privacy standards that should be implemented?" were considered. At the conclusion of the working group's meetings, the Working Group Leader collaborated with the participants to produce a Work Group Report that summarized the group's input and deliberations.

Members of the public and industry stakeholders were encouraged throughout the study to contribute to the discussion on the key topics by submitting comments to the Working Group Leader(s). After receiving all the Working Group Reports, the Lead Facilitator made any necessary edits and bridged the findings to draft the comprehensive Final Report. All reports, presentations, meeting agendas and summaries, public comments, and other related materials are available on the

NextGrid website (www.nextgrid.illinois.gov).

What Is Next for NextGrid?

The initial draft of the NextGrid Final Report was released at the end of December for public comment. After the review and comment period, the NextGrid Lead Facilitator will issue a revised final report, which is expected in early 2019. The initial draft of the NextGrid Final Report can be downloaded from the NextGrid website (www.nextgrid.illinois.gov), as well as information on how to submit comments.

Illinois is on a bright path to optimizing the grid of the future. A key factor to the state's success has undoubtedly been developing a holistic and proactive approach to understanding the complex subject matter and considering all available options and strategies for grid modernization. The future is here and Illinois is at the forefront. ■

Gerardo J. Delgado is an Illinois regulatory attorney and serves as a Legal & Policy Advisor to Commissioner Sadzi Martha Oliva at the Illinois Commerce Commission. The views, statements, and opinions expressed in this article do not necessarily represent the views, official policy or position of the Illinois Commerce Commission, any Commissioner or other ICC employees.

1. GridWise Alliance, *Grid Modernization Index* (Dec. 5, 2018), available at: <https://gridwise.org/grid-modernization-index-2018>.

2. *Id.*

3. MIT Energy Initiative and IIT-Comillas, *Utility of the Future* (2016), available at <http://energy.mit.edu/research/utility-future-study>.

4. *Id.*