

Where the energy transition is surging ahead: New York State

By Peter Trimarchi

Takeaways

- New York has already begun implementing comprehensive measures to decarbonize its entire economy
- Everyone doing business in New York should understand how that transition will affect their industry
- Those who understand the new regulatory environment can enjoy competitive advantages and avoid making bad investment decisions



The process of transitioning western economies from fossil fuel-based resources to renewable ones is happening unevenly. Most transition activities have been driven largely by private project developers, corporate environmental, social and governance (ESG) policies, or aspirational national and state-level “goals,” often with little teeth to them. Such actions are also largely focused solely on electricity generation, without addressing other sectors of the economy that use fossil fuels for energy, such as transportation and manufacturing.

Some places, however, are undertaking comprehensive actions to fully decarbonize their economies, backed by statutory mandates that will force the action to occur. The State of New York is one of those places. As described below, New York has passed comprehensive legislation requiring a true energy transition to occur in the state over the next 20 to 30 years. As New York now labors through the process of drafting regulations to make that vision a reality, it offers a window into how other jurisdictions can make similar changes, and how business and industry will need to adapt to a radically different economy in the not-too-distant future.

In 2019, New York passed the Climate Leadership and Community Protection Act (CLCPA), which establishes aggressive limitations on carbon emissions from all sectors of the economy. While it does predictably call for 100 percent of the state’s electricity generation to come from zero-emission sources by 2040, it also requires an 85 percent reduction in all greenhouse gas emissions statewide, from whatever source, by 2050. Importantly, the CLCPA defines statewide greenhouse gas emissions to include not just sources within the state, but also greenhouse gases produced outside the state for imported electricity or the extraction and transmission of fossil fuels imported into the state.



Clearly, those are remarkably ambitious requirements to be achieved in a very short period of time, which, of course, begs the question of how the state will actually do it. While it would be easy to assume that the requirements could be satisfied primarily through a shift to 100 percent renewable energy production, this is not true – electricity production actually accounts for a relatively small percentage of statewide greenhouse gas emissions. The state Department of Environmental Conservation (DEC) has determined that the state’s greenhouse gas emissions are currently generated from buildings (32 percent), transportation (28 percent), electricity (13 percent), waste (12 percent), industry (9 percent), and agriculture (6 percent). Those numbers demonstrate that a truly comprehensive energy transition will require far more than just the installation of solar panels and wind farms.

The CLCPA lays out how the state will implement its strict mandates. First, by 2023 a Climate Action Council, made up of the heads of various state agencies and other members, must develop a Scoping Plan which will provide recommendations for achieving the required emissions limits (including regulatory measures). The Council issued a draft Scoping Plan in December 2021, which is now available for public comment. The CLCPA then charges DEC and other state agencies with issuing binding regulations by January 1, 2024, which will implement measures to achieve the required emissions reductions.

The magnitude of the changes the CLCPA will require is evident in the draft Scoping Plan issued by the Climate Action Council. Within its 331 pages, the draft Scoping Plan calls for some truly disruptive actions that will be required to achieve the reductions called for by the CLCPA. Some of these include (a) a price on greenhouse gas emissions; (b) elimination of natural gas as a fuel source for new single and multi-family homes by 2024 and 2027, respectively; (c) a requirement that all light-duty vehicles and 40 percent of medium- and heavy-duty vehicles sold in the state be zero-emission by 2030; and (d) capture or elimination of methane sources from

waste, agriculture, and energy sectors. The Scoping Plan calls for the electrification of almost all aspects of the residential, manufacturing, and transportation sectors of the economy, and reliance on renewable energy sources for that electricity. Such reliance on electrification is so significant, in fact, that New York’s peak electric load is expected to flip from a summer peaking system to a winter peaking system, due to the electrification of so many heating systems and the reduced performance of electric vehicle battery systems in winter months.

Although the final implementing regulations are not due until January 1, 2024, state agencies and the Legislature are not simply waiting around to see how they turn out. Both are actively taking measures on their own to ensure that new actions are consistent with the goals of the CLCPA. As just two examples, the DEC is now requiring all applications for new air emissions permits to include a discussion of how the permittee’s operations will be consistent with the goals of the CLCPA, and the Legislature recently sent a bill to the Governor’s desk for signature that imposes a two-year moratorium on the issuance (or renewal) of air permits to power plants that sell power to certain cryptocurrency mining operations.

The CLCPA’s far-reaching impacts are thus already affecting businesses in New York, and will fundamentally change the way business is conducted in New York over the next three decades. Companies with operations in the state, or with plans to expand there, must pay very close attention to the future actions of the Climate Action Council and state regulatory authorities, to determine how proposed future actions will affect their industries. They should also strongly consider participating in the regulatory process, to help shape the final rules to the greatest extent possible.



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Peter is a partner in the New York office and counsels clients in all aspects of environmental law, particularly in transactional matters, including financing and development of renewable energy projects. He helps clients manage environmental risks and permitting challenges in the most efficient manner possible, and helps them take advantage of opportunities in a complex and ever evolving regulatory landscape. If the need arises, Peter also represents clients in enforcement proceedings and environmental litigation matters. A large part of Peter's practice is in the project development space. He helps project developers obtain environmental and land use permits for solar

and wind projects, natural gas facilities, and other energy and infrastructure projects. He also assists lenders with the detailed environmental and permitting due diligence required for complex project finance transactions. With the recent boom in solar PV systems in New York, Peter has gained significant experience assisting clients in the development and financing of those systems. He helps clients understand and comply with relevant orders of the New York Public Service Commission and the NY-Sun incentive program, identify and obtain required state and local permits, and purchase and sell individual projects or portfolios of projects throughout the state and beyond. He also has extensive experience in the New York community solar market, representing companies soliciting and managing both anchor customers and mass market customers to be assigned to a community solar project.

