Published on *The National Law Review* https://natlawreview.com

New York’s Landmark Climate Bill Creates Massive Investment Opportunities but with Few Details for Businesses

Article By:

Sarah A. W. Fitts

Jane E. Montgomery

New York Governor Andrew Cuomo just signed into law an ambitious statewide climate change agenda – the Climate Leadership and Community Protection Act (CLCPA). The CLCPA focuses on greenhouse gas (GHG) reduction through adoption of renewable energy and energy sector mandates for GHG reductions, although the legislation leaves open the exploration of other means of GHG reduction and the expansion to economy-wide regulation. The legislation also focuses on adaptation mechanisms, including hardening infrastructure to withstand disasters. Commercially, the CLCPA goals present massive investment opportunities to help fund and develop this transformation. But investors are looking for incentives, and it remains unclear how future regulations will *encourage* future investments, rather than mandate them.

The CLCPA’s headline numbers include ambitious goals for statewide carbon reduction and adoption of renewable energy:

By 2025

- Load-serving entities procure at least six gigawatts of photovoltaic solar

By 2030

- Statewide greenhouse gas emissions reduced to 60 percent of 1990 emissions levels
- 70 percent of state-wide electric generation secured by jurisdictional load serving ent be generated by renewable energy.
- Support three gigawatts of statewide energy storage.

By 2035

- Load-serving entities procure at least nine gigawatts of offshore wind.

By 2040

- Statewide electrical demand system will be zero emissions

By 2050

- Statewide greenhouse gas emissions reduced to 15 percent of 1990 emissions.

But as ambitious as the CLCPA goals are, the bulk of it reads more like a series of homework assignments for a class group project.

We’re only being a little bit sarcastic.

At its core, the CLCPA is a series of tasks that will eventually lead to realization of the GHG reduction goals. Under the law, various state agencies, councils, and commissions are required to:

- Establish the New York State Climate Action Council (the Council), a 22-member, unpaid council that will include commissioners of several state agencies and power authorities, non-agency experts appointed by the governor, and members appointed by the majority leaders of the senate and assembly (three each) and the minority leaders of the senate and assembly (one each).

- Instruct the Council to convene advisory panels of no more than five voting members on several topics, including transportation, land use, government efficiency, and agriculture and forestry, chaired by the relevant agency head (or designee).

- Require the Council, DEC, and other state actors to hold multiple state hearings and to produce multiple reports, all of which are intended to inform the scope of the possible reduction sources, provide transparency on the process to establish a scoping plan, and to inform the regulations ultimately adopted by New York State to achieve the stated goals. Key milestones include:

    - Within one year, the DEC will quantify the permitted emissions reductions limits.

    - Within one year, DEC, in consultation with NYSERDA, must establish the social cost of carbon for use by state agencies, expressed in terms of dollars per ton of carbon.

    - Within two years, a DEC report on statewide greenhouse gas emissions, from all sources, expressed in tons of carbon dioxide.

    - Within two years, the Council must prepare a scoping plan outlining the recommendations for attaining the statewide greenhouse gas emissions limits set out in CLCPA.

- Within three years, the Council must submit the final scoping plan.

Perhaps most notably, within four years, the DEC (after public workshops, consultation with the Council, the Environmental Justice Advisory Group, and the Climate Justice Working Group, representatives of public unions, health officials, labor unions and many others) must promulgate regulations to ensure compliance with statewide emissions reductions limits.

This is not the first big step New York has taken to combat climate change. The CLCPA follows on the heels of the New York City Climate Mobilization Act, which requires large- and medium-size buildings to reduce emissions 40 percent by 2030 and 80 percent by 2050, the city's adoption of congestion pricing, and New York Independent System Operator's exploration of carbon pricing. New York State is also one of eleven states in the Northeast that participate in the Regional Greenhouse Gas Initiative, which requires fossil fuel electric generators to participate in an auction to emit GHGs, and one of nine ZEV Mandate States voluntarily following California's zero emission vehicle regulations. Taken together, New York is a leader among states establishing plans to address climate change.

To be sure, New York has a real leg up on achieving these goals, thanks to zero-emitting hydropower from Niagara Falls and imports from Quebec, all of which could be further enhanced by addressing transmission limitations that limit the power that can be transmitted to New York. In fact, it was recently estimated that the Upstate New York grid is already 87 percent emissions free, and as of 2017, New York City had reduced emissions by 14.8 percent since 2005 due in large part to more efficient and cleaner electricity generation.

But there is a large gap to close between this head start and the CLCPA targets, especially considering the projected increases in electricity demand if transportation and home heating are increasingly electrified and projected retirements of the remaining New York nuclear fleet. Just this week, New York City faced a massive power outage caused at least in part by faults in the grid. These examples highlight the many challenges of implementing the CLCPA targets primarily through increased electrification and also highlight the opportunities for infrastructure investment.

Lastly, environmental justice has been an objective in New York State for decades, and the CLCPA makes environmental justice a cornerstone of its objectives. For example, the CLCPA creates within the New York State Department of Environmental Conservation (the DEC) a Climate Justice Working Group with representatives from environmental justice communities, the DEC, the Department of Health, the New York State Energy and Research Development Authority (NYSERDA), and the Department of Labor, to establish criteria to identify disadvantaged communities. Project developers must take note as the criteria are established.

The CLCPA identifies a process that New York must follow over the next several years to develop fair and effective GHG emissions reductions. We don't know what the final regulations will require, but those interested in the process will be treated to a stream of public meetings and reports in the coming months and years, which should also provide insights as to the direction the regulations will ultimately take and the incentives available to potential investors. We will be watching and reporting on developments accordingly.

National Law Review, Volume IX, Number 199