

# New York Establishes New Targets for Greenhouse Gas Emissions Reductions and Renewable Generation That Will Have Profound Impacts on New York’s Electric and Natural Gas Industries

July 18, 2019

Governor Cuomo signed into law today the New York State Climate Leadership and Community Protection Act (the “Act”), which will have significant implications for New York’s utility industry. The Act, which passed the New York State Senate and Assembly on June 19, 2019, sets some of the most aggressive targets for greenhouse gas emissions reductions and renewable generation in the country.[1] The Act’s stated purpose is to eliminate greenhouse gas emissions to reduce the threat and negative effects of climate change. To achieve this purpose, the Act sets two progressive targets for greenhouse gas emissions: a reduction of at least 40% below 1990 emissions levels by 2030 and a reduction of 85% below 1990 emissions levels by 2050, with the remaining 15% being offset through “greenhouse gas emission offset projects” to achieve net zero emissions.[2]

The Act amends the Environmental Conservation Law to include a new Article 75, which sets limits for greenhouse gas emissions, establishes the New York State Climate Action Council to oversee the implementation of the emissions limits, and includes provisions for workforce impact and development as well as social justice. The Act also amends the Public Service Law by adding a new section 66-p, which establishes renewable generation and emissions targets for statewide electric generation. The legislation, which was signed into law by Governor Cuomo on July 18, 2019, has significant implications for New York’s utility industry.

The Department of Environmental Conservation (“DEC”) will have four years from the effective date of the article to promulgate regulations that will: ensure the aggregate emissions of greenhouse gases from greenhouse gas emission sources will not exceed the statewide greenhouse gas emissions limits; set forth legally enforceable emissions limits and performance standards; and include measures to reduce emissions from sources that have a cumulatively significant impact on statewide greenhouse gas emissions, such as internal combustion vehicles that burn gasoline or diesel fuel and electric power generation sources.

In addition to significant change to the transportation sector where gasoline and diesel engines will be under significant challenge, the new section 66-p of the Public Service Law may produce vast changes to the electrical

generation industry. The Act requires the Public Service Commission (“Commission”) to establish a program, by June 30, 2021, that requires a minimum of 70% of the statewide electric generation provided to end-use customers in New York be generated by renewable energy systems by 2030.[3] Further, by 2040, the Act mandates the elimination of all emissions from the electric sector. The Commission will issue a comprehensive review assessing the progress made towards these targets every two years beginning on July 1, 2024. The Act also requires the Commission to establish programs that require New York State’s load serving entities to meet the following procurement targets: six gigawatts of photovoltaic solar generation by 2025; three gigawatts of statewide energy storage capacity by 2030; and nine gigawatts of offshore wind electricity generation by 2035. Sources in the electric generation sector will be prohibited from participating in waste-to-energy products (such as incineration and pyrolysis) and using biofuels for energy or transportation purposes. Cost recovery mechanisms associated with these new requirements are not detailed.

The Act also includes several provisions that will impact the natural gas industry in New York and beyond. First, the Act defines “greenhouse gas” broadly to include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and “any other substance emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change.” Notably, natural gas is composed primarily of methane. Additionally, burning natural gas produces CO<sub>2</sub> and the law provides for regulations on boilers or furnaces that burn natural gas. Second, the Act also captures out-of-state emissions in two ways. For example, “statewide greenhouse gas emissions” under the Act include not only emissions from in-state sources, but also from greenhouse gases produced outside New York that are associated with either the generation of electricity or extraction and transmission of fossil fuels imported into the state. Natural gas-fired power plants that export electricity into New York, therefore, arguably will be impacted by the Act, as might be natural gas imported into the state for use in home heating and other natural gas usage applications. In addition, the Act requires the newly formed New York State Climate Action Council (“Council”)[4] to recommend mechanisms to minimize “leakage,” or increases in out-of-state emissions that offset reductions in in-state emissions.

The Council is also tasked with preparing and approving a “scoping plan” that outlines recommendations to meet and exceed the emissions limits established by the Act. Broadly stated, the scoping plan will identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits and for the reduction of emissions beyond 85%, net zero emissions in all sectors of the economy. This scoping plan will inform the state energy planning board’s adoption of a state energy plan. Among other things, the scoping plan will include performance standards for sources of greenhouse gas emissions in various sectors including, but not limited to, the transportation, building, industrial, commercial, and agricultural sectors. The plan will create regulations on motor vehicles that use gasoline or diesel and boilers or furnaces that burn oil or natural gas. Additionally, the scoping plan will set measures to reduce emissions from the electricity sector by displacing fossil-fuel fired electric energy with renewable electricity. Furthermore, land-use and transportation planning measures to reduce vehicle emissions will be enacted. Notably, the scoping plan will recommend measures to reduce energy use in existing residential or commercial buildings. While developing the scoping plan, the Council will consider, among other things, all relevant information pertaining to greenhouse gas emissions reduction programs (including state, regional, and national programs), the costs (both economic and non-economic), and the effect of the programs in disadvantaged

communities.[5]

The Act also addresses social goals including the development and training of the workforce related to energy efficiency, renewable energy, and clean energy technologies needed to meet the Act's emissions limits, with a focus on underrepresented groups such as people in disadvantaged communities, veterans, women and formerly incarcerated persons. Additionally, the Act also provides for the establishment of a "climate justice working group." The Act requires that resources used to meet the emissions targets be invested or directed such that the "disadvantaged communities" meeting the working group's criteria receive at least 35%, with an ultimate goal that they receive 40% of the overall benefits of the Act's clean energy and energy efficiency programs

Numerous questions exist regarding implementation of the Act. It is unknown at this time whether the new targets established by the Act will prove impossible to meet. The impact on the State's electric and natural gas utilities also remains open. All that is known at this juncture is that the scoping plan developed by the to-be-formed Council must include measures to reduce emissions from the electricity sector by replacing fossil fuel-fired electricity with renewable generation. Similarly, the new renewable generation requirements set forth in the new section 66-p of the Public Service Law will further reduce the use of natural gas-fired generation and the Act makes no mention of new nuclear power capacity. The Act may also have a significant impact on the New York's natural gas industry and natural gas customers, as it specifically directs the DEC to promulgate regulations that include measures to reduce emissions from boilers or furnaces that burn natural gas, likely resulting in conversions of low cost gas fired furnaces to higher cost electric heating applications.

Furthermore, the "leakage" provisions of the Act could restrict the importation of natural gas or electricity produced by fossil sources. Given its recent vintage and the lack of implementing regulations, the Act raises the possibility of future federal Constitutional challenges based on commerce clause, preemption and takings theories.

Of course, considerable work with respect to the greenhouse gas restrictions and the methods and specific requirements adopted will unfold over the next four years, as the Council and subgroups undertake the tasks delegated to them by the Legislature. What is certain at this early juncture is that the Act will inevitably impact the state's utility and energy industry.

Please note that this advisory provides a general overview of the Act and is not intended as formal legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have any questions please feel free to contact:

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[1] N.Y. Legis. Assemb. A. 8429. Reg. Sess. 2019-2020 (2019); N. Y. Legis. Sen. S. 6599. Reg. Sess. 2019-2020 (2019).

[2] "Greenhouse gas emission offset projects" include projects designed to remove carbon from the atmosphere, such as "natural carbon sinks" (e.g., afforestation, reforestation, or wetlands restoration) and other environmental investments, reductions in ozone depleting substances, and other projects that provide public

health and environmental benefits.

[3] “Renewable energy systems” are defined by the Act to include solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells that do not utilize fossil fuels.

[4] The Council will be composed of 22 members, including various commissioners of New York agencies and departments; non-agency experts appointed by the governor; and members appointed by: the president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly; and at-large members. The Council’s co-chairpersons will be the Commissioner of Environmental Conservation and the President of the New York State Energy Research and Development Authority.

[5] “Disadvantaged communities” are “communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households.”

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