

MJB&A Summary ■ July 3, 2019 (last updated July 18, 2019)

New York State Climate Leadership and Community Protection Act

On July 18, 2019, Governor Cuomo signed the Climate Leadership and Community Protection Act (Act) that, among other things, increases the stringency of the state’s long-term economy-wide greenhouse gas (GHG) reduction goal to 85 percent below 1990 levels by 2050 and establishes a new goal to achieve net-zero emissions economy-wide by 2050.¹

The Act directs the development of a Scoping Plan that identifies and recommends regulatory measures and other state actions that will ensure the attainment of the state’s 100 percent net-zero goal and establishes a process for the consideration of the social and economic transitions needed to ensure that the state’s most vulnerable communities are not disproportionately impacted.

This issue brief summarizes key aspects of the Act, which will go into effect on January 1, 2020.

Summary of Key Aspects of the Act

The Act establishes a series of new targets for GHG emission reductions for the state, renewable energy, and energy efficiency investments and creates a Climate Action Council and several working groups to focus on addressing issues related to the state’s most vulnerable communities. Additionally, the Act creates a process by which multiple agencies will jointly evaluate the economic, social, and environmental benefits associated with the implementation of the new targets and programs.

GHG Emission Limits and Target

The Act sets a new GHG emissions reduction goal of 40 percent below 1990 levels by 2030 and 85 percent below 1990 levels by 2050. These emissions limits apply to GHGs produced within the state, produced outside of the state but are associated with the electricity imported into the state, and the “extraction and transmission of fossil fuels imported into the state.” The Act also sets a new goal of achieving net-zero emissions economy-wide by 2050 and directs the Climate Action Council (described more fully below) to make recommendations on how the state can attain the 100 percent target.

By January 1, 2024, the Department of Environmental Conservation (DEC) must promulgate regulations to ensure compliance with the statewide emissions reductions for 2030 and 2050. To develop these regulations, the Act sets forth the public process and development process for the DEC to work with other state agencies. The regulations must ensure that the aggregate GHG emissions do not exceed the established limits and must include legally enforceable emission limits, performance standards, or other requirements to control emissions from sources excluding agricultural emissions from livestock. The regulations must also, “in substantial part,” reflect

¹ S. 6599, A. 8429, *New York State Climate Leadership and Community Protection Act*, 2019-2020 Regular Session (NY 2019), <https://legislation.nysenate.gov/pdf/bills/2019/S6599>.

the Scoping Plan (described below) and include measures that have a “cumulatively significant impact on statewide greenhouse gas emissions, such as internal combustion vehicles that burn gasoline or diesel fuel and boilers or furnaces that burn oil or natural gas.”

The Act directs the DEC to ensure the regulations minimize costs, maximize benefits, and encourage early action to reduce GHGs. The DEC must also ensure that the regulations do not increase co-pollutant emissions and do not, as discussed more fully below, disproportionately burden disadvantaged communities. Finally, the DEC must also incorporate measures to minimize leakage—defined as “a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse cases outside the state.”

Alternative Compliance Mechanism – Greenhouse Gas Emission Offsets

The Act authorizes the DEC to establish an Alternative Compliance Mechanism (ACM) to be used by sources subject to the GHG emission limits to achieve net zero emissions subject to certain restrictions. In order to include the ACM, the DEC must first consult with the New York State Climate Action Council, the Environmental Justice Advisory Group and the Climate Justice Working Group. If the ACM is established, the DEC must develop an application process requiring sources to sufficiently demonstrate that their compliance with the GHG emissions limit is not technologically feasible and that the source has reduced emissions to “the maximum extent practicable.”

The ACM can only account for up to 15 percent of the statewide GHG emissions² and electric generation sources are not eligible to participate in the ACM. The ACM must offset a quantity greater than or equal to the GHGs emitted, and the DEC is required to verify that the GHG emissions offset project represents the GHG equivalent emissions reductions or carbon sequestration and that the reductions are “real, additional, verifiable, enforceable, and permanent.” As discussed below, any ACM projects also cannot result in disadvantaged communities bearing a disproportionate burden of environmental impacts.

The Act requires that eligible projects for the ACM be additional (i.e., not otherwise required by law or being undertaken for other reasons within the next five years) and cannot be projects that contribute to environmental research at a college or university or that are studies or assessments without a commitment to implement results. Waste-to-energy projects and biofuels for energy or transportation purposes are also prohibited from qualifying. The Act lists offset projects that can qualify, including: natural carbon sinks; greening infrastructure; sustainable forestry or land management; projects reducing hydrofluorocarbon (HFC), sulfur hexafluoride (SF₆) or other ozone depleting substances; anaerobic digesters; carbon capture and sequestration; ecosystem restoration; and other projects that the Council and Climate Justice Working Group recommend.

Projects approved for the ACM must be designed to provide a discernable benefit to society, be located in the same county and within 25 miles of the source of emissions to the extent practicable, enhance the conditions of the ecosystem or geographic area affected, and substantially reduce or prevent the generation or release of pollutants through source reduction. The Act directs the DEC to prioritize projects that maximize public health and environmental benefits within the state, especially those with localized benefits within disadvantaged communities.

Climate Action Council and Working Groups

² As estimated as a percentage of 1990 emissions from the Greenhouse Gas Emissions Report.

To support the development of the regulations, the Act establishes a Climate Action Council and several working groups to evaluate the economic, social, and environmental benefits associated with the implementation of the Act. The 22 member New York State Climate Action Council (“Council”)³ is charged with the development of a scoping plan, described in detail below, in order to ensure that emissions reduction targets are met. The Act also creates, by July 1, 2020, a Climate Justice Working Group⁴ to identify disadvantaged communities based on geographic, public health, environmental hazard and socioeconomic criteria.

Among other tasks, the Council is responsible for convening a Just Transition Working Group which, in coordination with the Environmental Justice Advisory Group and the Climate Justice Working Group, will:

- 1) advise the Council on workforce development and training related to energy efficiency measures, renewable energy and clean energy technology focusing specifically on workforce opportunities for disadvantaged communities and underrepresented groups;
- 2) identify energy-intensive industries and sector specific impacts of the state’s current workforce and avenues to transition skills into a new energy economy;⁵ and
- 3) prepare and publish recommendations to the Council on how to address issues and opportunities related to the above communities and to also assess measures to minimize the carbon leakage risk and anti-competitiveness impacts of any potential carbon policies and energy sector mandates.

Scoping Plan and Progress Reports

The Act requires several agencies and working groups to develop a Scoping Plan and progress reports to ensure that the Act is achieving its emissions reduction goals.

Scoping Plan

By January 1, 2022, the Act requires the Council to prepare and approve a draft Scoping Plan outlining the recommendations for attaining the statewide GHG emission limits and for reducing emissions beyond 85 percent and net-zero emissions in all sectors of the economy. The final Scoping Plan must be completed by January 1, 2023 and will inform the next State Energy Plan. (The Appendix includes additional information on the requirements for the Scoping Plan.) Once the Scoping Plan is complete, the Council must update the statewide GHG emission limits at least once every five years.

Statewide Greenhouse Gas Emissions Report

The Act directs the DEC to issue a statewide Greenhouse Gas Emission Report by January 1, 2022, and each year thereafter, expressing the tons of CO₂ equivalent (CO₂e) from all GHG sources in the state including the relative

³ The Council will consist of Commissioners from the Departments of Transportation, Health, Economic Development, Agriculture and Markets, Housing and Community Renewal, Environmental Conservation, and Labor; the chairperson of the PSC, presidents of NYSERDA, NYPA, LIPA, Secretary of State, as well as two non-agency expert members appointed by the governor, three members appointed by the temporary President of the Senate, three members appointed by Speaker of the Assembly, one member appointed by the Minority Leader of the Senate and one member appointed by the Minority Leader of the Assembly.

⁴ The Climate Justice Working Group will include environmental justice communities, the Department, the Departments of Health and Labor, and NYSERDA.

⁵ The Just Transition Working Group will also be responsible for conducting a study on the number and type of jobs created to counter climate change and will create an inventory of the jobs needed and the skills required to meet the demand for jobs and to assess workforce disruption due to community transitions from a low carbon economy.

contribution of each type of GHG emissions and each type of source to the statewide total. The report must include an estimate of the GHG emission levels within the state in 1990 and must utilize “best available science and methods of analysis” in the DEC’s determination of GHG emissions.⁶ The report must also include an estimate of GHG emissions associated with the generation of imported electricity and with the extraction and transmission of fossil fuels imported into the state. By January 1, 2021, the DEC must consider establishing a mandatory registry and reporting system for individual sources to ensure that the DEC is able to obtain data on GHG emissions exceeding a particular threshold.

Implementation of Greenhouse Gas Reduction Measures Report

Every four years, the Council must publish a report with recommendations regarding the implementation of GHG reduction measures.

The Greenhouse Gas Reduction Measures Report must:

- 1) indicate whether the state is on track to meet statewide GHG emission limits and to determine if the state needs to modify the plan to ensure that limits are met;
- 2) provide an overview of social benefits from regulations and compliance costs and must determine whether regulations are equitable, minimize costs and maximize benefits, and encourage early action;
- 3) determine if actions disproportionately burden disadvantaged communities and create an assessment of disadvantaged communities’ access to or ownership of services within the Act;
- 4) determine local benefits and impacts of any reductions in co-pollutants;
- 5) determine if the entities that voluntarily reduced their GHG emissions prior to this Act received appropriate credit for early voluntary reductions; and
- 6) recommend future regulatory and policy action.

The DEC must consult with the Council and the Climate Justice Working Group on the report and publish the report online.

Renewable Energy and Energy Efficiency Programs

Renewable Energy Targets

The Act requires the Public Service Commission (“PSC”) to establish a renewable energy program by July 13, 2021 that requires, by 2030, that at least 70 percent of electric generation supplying New York’s end-use customers be generated by renewables. By 2040, the Act requires that the statewide electrical systems be zero emissions. These requirements are an increase from the state’s 2016 Clean Energy Standard, which required 50 percent of electricity sales from eligible renewables resources including provisions for existing eligible nuclear facilities.⁷

Additionally, the PSC must issue a comprehensive review of the renewable energy program by July 1, 2024. Notably, the Commission “can temporarily suspend the program if program impedes the provision of safe and adequate electrical service.”

⁶ The Department will hold two public hearings regarding methodology and analysis.

⁷ State of New York Public Service Commission, “Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard,” (August 1, 2016), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b44C5D5B8-14C3-4F32-8399-F5487D6D8FE8%7d>.

The Act also includes several procurement obligations that the PSC must establish by July 1, 2024 to ensure that load serving entities procure at least:

- 9 gigawatts (GW) of offshore wind by 2035,
- 6 GW of solar photovoltaic (PV) by 2025; and
- 3 GW of storage capacity by 2030.

Energy Efficiency Targets

The Act sets an energy efficiency goal of achieving 185 trillion BTU of end-use energy savings below the 2025 end-use forecast. Where practical, the Act directs the PUC to ensure that at least 20 percent of these investments are for residential energy efficiency, including multi-family housing, and benefit disadvantaged communities including low-to-moderate income communities.

Renewable Energy and Energy Efficiency Implementation

As discussed more fully below, the Act also includes provisions to ensure that the implementation of both renewable energy and energy efficiency goals also benefit disadvantaged communities. Specifically, the ACT directs:

- 1) the PSC to specify a minimum percentage that energy storage projects should deliver to NYISO zones that serve disadvantaged communities and will also reduce peaking facilities located in or near disadvantaged communities;
- 2) New York State Energy Research and Development Authority (NYSERDA) to consider enhanced incentive payments for solar and community distributed generation projects focusing on projects that serve disadvantaged communities which result in energy cost savings or demonstrate community ownership models; and
- 3) NYSERDA and New York’s Investor Owned Utilities (IOUs) to jointly develop report metrics for energy savings and clean energy market penetration in the low-and-moderate income market and in disadvantaged communities and must make this information available to communities on NYSERDA’s website.

Social Cost of Carbon

Within the first year of the Act, the DEC must establish a social cost of carbon (\$/ton CO₂e) that all state agencies must use in their decision-making processes. The social cost of carbon “may be based on marginal GHG abatement costs or global economic, environmental, and social impacts of emitting a marginal ton of GHG into the atmosphere using a range of discount rates including a rate of zero.”

Addressing Disadvantaged Communities

Throughout the Act, there is a focus on designing each policy to assist disadvantaged communities ranging from ensuring co-pollutant reductions and monitoring to investments in workforce development, energy efficiency, and renewable energy projects. The Act identifies disadvantaged communities based on geographic, public health, environmental hazard, and socioeconomic activity and specifically focuses on communities that have existing cumulative environmental pollution, are located in areas with high concentrations of unemployment, low income and low levels of home ownership and are located in areas that are especially vulnerable to the impacts of climate change. The Act directs the Climate Justice Working Group, the DEC, Departments of Health and Labor, NYSERDA, and the Environmental Justice Working Group to create criteria to identify disadvantaged communities for the purposes of, “co-pollutant reductions, GHG emissions reductions, regulatory impact

statements, and the allocation of investments related to GHG emissions reductions.” Based on that process, the DEC must publish draft criteria identifying disadvantaged communities and the Council must hold at least six regional public hearings on the draft criteria and draft list of disadvantaged communities.⁸

Once the DEC finalizes the criteria and communities are identified, the Act directs multiple working groups and state agencies to work on several issues centered around disadvantaged communities. When creating the Scoping Plan, the Council must maximize reductions of both GHG emissions and co-pollutants in disadvantaged communities. The DEC also must ensure that compliance with the Act does not create a net increase in co-pollutant emissions or otherwise overly burden communities. Specifically, by January 1, 2024, the Act requires the DEC to determine whether the implementation of the GHG emission reductions has disproportionately burdened disadvantaged communities and assess whether there are local benefits and impacts of any reductions in co-pollutants from GHG reduction measures and if communities have had access to—or community ownership of—services.

In conjunction with the Climate Justice Working Group, the Act creates a Community Air Monitoring Program to identify the highest priority locations to deploy community air monitoring systems, focusing on areas in disadvantaged communities, across the state. The Act requires the DEC to select at least four disadvantaged communities and the DEC can annually select additional locations and can use the “most cost-effective measures” to achieve emissions reductions for the selected locations. By October 1, 2022, the DEC and the Climate Justice Working Group must create a program demonstrating community air monitoring systems and before June 1, 2024, the Act directs them to prepare a strategy to reduce emissions of toxic air contaminants and criteria air pollutants in disadvantaged communities.

The Act also directs funding for projects and programs that assist disadvantaged communities. State agencies, authorities and entities, the environmental justice working group, and the climate action council must provide at least 35 percent (with the goal of 40 percent) to disadvantaged communities of the overall benefits spending on clean energy and energy efficiency programs, projects, or investments. Furthermore, the Just Transition Working Group must advise the Council on training and workforce opportunities for disadvantaged communities and must submit recommendations to the Council on how to address issues and opportunities related to disadvantaged communities and underrepresented segments of the population.

Additionally, at least 20 percent of investments in energy efficiency must be invested in disadvantaged communities, including investments in multifamily housing and to low-to-moderate income consumers. The Act also requires the PSC to evaluate and specify the minimum percentage of energy storage projects that should deliver cleaner energy benefits into NYISO zones that serve disadvantaged communities including energy storage projects that reduce the use of peaking facilities located in or near disadvantaged communities. Further, the DEC must establish and implement renewable energy projects in public low-income housing in suburban, urban, and rural areas, and as discussed below, the DEC must consider the impacts on disadvantaged communities when promoting adaptation and resilience efforts.

⁸ The Department must allow 120 days for the submission of public comment on the initial criteria and the Climate Justice Working Group must meet annually to review the criteria.

Promoting Resilience

The Act directs the DEC to help state agencies and other entities assess the foreseeable risks of climate change on any proposed projects and asks the DEC to identify: 1) the most significant climate-related risks and the probability and uncertainty of those risks and; 2) measures that could mitigate significant climate related risks, cost benefit analyses, and the implementation of the identified measures. The Act requires that permits for certain regulatory programs⁹ require applicants to demonstrate that future physical climate risks have been considered and authorizes the DEC to require applicants to mitigate significant risks to public infrastructure and/or services, private property not owned by the applicant, and property with adverse impacts on disadvantaged communities and/or natural resources in the vicinity of the project.

⁹ The regulatory programs include: 1) protection of waters; 2) water supply and water transport; 3) wild, scenic and recreational rivers system; 4) certifications under section 401 of the federal water pollution control act amendments of 1972; 5) state pollution discharge elimination system; 6) realty subdivisions: sewerage service; 6) air pollution control; 7) liquified natural and petroleum gas, mined land reclamation; 8) freshwater and tidal wetlands; 8) collection, treatment and disposal of refuse and other solid waste; 9) coastal erosion hazard areas.

Appendix – Scoping Plan Requirements

In addition to the requirements for the Scoping Plan described above, the plan must include recommendations related to:

- 1) Performance-based standards for sources of GHG, including transportation, building, industrial, commercial, and agricultural.
- 2) Measures to reduce emissions from electricity by displacing fossil-fuel electricity with renewable energy or energy efficiency.
- 3) Land-use and transportation planning measures aimed at reducing GHG emissions from motor vehicles.
- 4) Measures to achieve long-term carbon sequestration and/or promote BMP in land use, agriculture and forestry.
- 5) Measures to achieve six GW of distributed solar energy capacity installed in the state by 2025, nine GW offshore wind capacity installed by 2035, statewide energy efficiency goal of 185 trillion BTUe reduction from 2025 forecast, 3 GW statewide storage capacity by 2030.
- 6) Measures to promote beneficial electrification of personal and freight transport and other transportation sector emission reductions.
- 7) Beneficial electrification of water and space heating in buildings, establishing appliance efficiency standards, strengthening building energy codes, requiring annual building energy benchmarking, disclosing energy efficiency in home sales, expanding the ability of state facilities to utilize performance contracting.
- 8) Recommendations to aid in the transition of the state workforce and the rapidly emerging clean energy industry.
- 9) Measures to achieve healthy forests, that support clean air, water, biodiversity, and sequester carbon.
- 10) Measures to limit the use of chemical, substances or products that contribute to climate change when released in the atmosphere but are not intended for end-use consumption.
- 11) Mechanisms to limit emission leakage and determine verifiable, enforceable and voluntary emissions reduction measures.

The Council must also evaluate: 1) all relevant GHG reduction programs in the U.S.; 2) total potential costs and economic and non-economic benefits of the plan for reducing GHG emissions including the social cost of carbon; 3) costs of implementing proposed emission reduction measures and the emission reductions that the council anticipates; 4) the relative contribution of each source or source category to statewide GHG emissions, and the potential for adverse effects on small businesses; 5) minimum threshold of GHG emissions below which emission reduction requirements will not apply; 6) measures to maximize reductions of both GHG emissions and co-pollutants in disadvantaged communities.

Contacts

For more information on this topic, please contact:

Carrie Jenks
Executive Vice President
cjenks@mjbradley.com
(978) 369-5533

Jane Culkin
Policy Analyst
jculkin@mjbradley.com
(978) 369-5533

About Us

MJB&A provides strategic consulting services to address energy and environmental issues for the private, public, and non-profit sectors. MJB&A creates value and addresses risks with a comprehensive approach to strategy and implementation, ensuring clients have timely access to information and the tools to use it to their advantage. Our approach fuses private sector strategy with public policy in air quality, energy, climate change, environmental markets, energy efficiency, renewable energy, transportation, and advanced technologies. Our international client base includes electric and natural gas utilities, major transportation fleet operators, investors, clean technology firms, environmental groups and government agencies. Our seasoned team brings a multi-sector perspective, informed expertise, and creative solutions to each client, capitalizing on extensive experience in energy markets, environmental policy, law, engineering, economics and business. For more information we encourage you to visit our website, www.mjbradley.com.