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Recent Decision from New York State Supreme Court Brings State-Mandated Greenhouse Gas Emission Reduction Challenges Into Focus

In *Citizens Action of New York et al. v. Department of Environmental Conservation*, a state Supreme Court in Albany County, New York, granted the petitioner's request for a mandatory injunction and directed the New York State Department of Environmental Conservation (DEC) to issue regulations under the Climate Leadership and Community Protection Act (CLCPA). The case was nominally about the discretion of a state agency to delay promulgation of rules when those rules are required by an act of the legislature. Of greater significance though is the nature of the required rulemaking and the arguments advanced by DEC to defend its position that the rulemaking is "infeasible." The case highlights a growing problem in New York State with respect to the development of renewable energy sources and transmission capacity. These problems are particularly relevant to building owners in New York City faced with compliance obligations under Local Law 97 (LL97).

In 2019, the New York State Legislature passed the CLCPA to address climate change and reduce the emissions of greenhouse gases (GHG). The CLCPA requires New York to achieve a 40 percent reduction in GHG emissions by 2030 and an 85 percent reduction by 2050, measured against the 1990 emissions levels. Crucial to reaching those reductions was the inclusion of specific goals for 6 gigawatts of solar power by 2025, 9 gigawatts of new offshore wind power by 2035, and 3 gigawatts of battery storage by 2030. As relevant to the litigation, the CLCPA requires that DEC promulgate regulations to achieve the mandated emissions reductions no later than four years after the enactment of the CLCPA (January 1, 2024).

The court held that DEC violated the mandates of the CLCPA by failing to promulgate regulations within the prescribed time frame. As the court recognized, 18 months had passed since the deadline

lapsed. The court further rejected DEC's argument that promulgating regulations would be "infeasible" because achieving the target emissions "would require imposing extraordinary and damaging costs upon New Yorkers." Indeed, as the court found, the Legislature did not empower DEC to choose whether to comply with the CLCPA but rather created a mandate that DEC would promulgate necessary regulations within a specific time frame. As part of its decision, the court set a deadline of February 6, 2026, for when DEC must promulgate the required regulations under the CLCPA. DEC is reviewing whether to appeal the decision.

The transition to lower emissions under the CLCPA requires a significant investment in New York's outdated electrical grid system, as well as massive increases in renewable energy infrastructure. Many of the projects required to achieve the goals of the CLCPA, such as offshore wind, have faced significant post-COVID cost increases and supply chain problems. The projects also face significant opposition from the Trump administration. Indeed, there are only two offshore wind projects under construction in New York, which, when completed, are expected to generate a combined approximately 1.7 gigawatts of renewable power. This is far short of the CLCPA's goal of 9 gigawatts by 2035. As a result, DEC argued that the 2030 emissions goal "is not practically feasible *due to costs consumers simply cannot bear.*"

The inability of the state to meet the CLCPA's targets will have significant impacts on building owners in New York City facing compliance obligations under LL97. Passed in 2019, LL97 established GHG emissions caps for covered buildings starting in 2024. These caps become increasingly more stringent over time. The owners of buildings that fail to comply with the GHG emissions caps will face significant penalties.

At its heart, LL97 is an electrification law, intended to phase out the use of all fossil fuel energy sources in covered buildings in favor of building electrification. The goal ultimately is to electrify all buildings while the state converts to a net zero electrical grid.

While LL97 is separate from the CLCPA, and was not at issue in *Citizens Action of New York*, long-term compliance with LL97's emissions caps is inextricably linked to the state achieving its GHG

emission reduction goals. Indeed, compliance with LL97 is simply not possible for even the most green and efficient buildings absent a dramatic increase in renewable energy resources and utility scale battery storage facilities. The failure of the state to meet its goal sets up a scenario where building owners may see both dramatic increases in their energy costs and significant LL97 penalties.

As noted by the court, DEC has essentially two options: promulgate the rules required to ensure the state meets its CLCPA goals “and let the chips fall where they may,” or ask the Legislature to amend the CLCPA emissions targets. If the state does modify the CLCPA targets, query whether New York City will also provide relief to New York City building owners.

Gibbons P.C. will continue to monitor and report developments related to LL97 and New York’s progress toward complying with the CLCPA.

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