

**FOCUS:  
ENVIRONMENTAL LAW**

**John Parker**

**W**e are witnessing the impacts of a changing climate. It is more than hot summer weather. The data shows extreme weather and extreme heat in the United States and throughout the world. Two highly visible examples include the record setting streak of 110 degree plus days in Phoenix, Arizona and a heat dome that has been contributing to high temperatures in large sections of the country.<sup>1</sup>

Here in New York, smoke from forest fires in Canada brought troubling orange skies this summer showing that impacts from climate change will not be limited by international borders.<sup>2</sup> Indeed, researchers are learning more

## Summer of 2023: Long Island Reacts to the Impacts of a Changing Climate

about the significant impacts of the temperature increases. When looking at ice cores collected from a former military site in Greenland, researchers found that underneath the current 4,500 foot ice sheet, some 400,000 years ago, there was once a thriving ecosystem that began melting during a time when temperatures were slightly above today's anticipated future increases. If that ice was to melt under moderate temperature increase scenarios in the centuries to come, sea level rise could be irreversible and be expected to exceed over four feet.<sup>3</sup>

New York is blessed with over 2,600 miles of shorelines and over 500 miles of salt-water coastline, including the Atlantic Ocean and the Long Island Sound.<sup>4</sup> Long Island communities will undoubtedly be significantly impacted in the coming years and decades by even moderate changes in temperature and sea level, prompting the urgency for climate action now. Undoubtedly, the world will survive a changing climate as

it has in the past, however, our communities and our lifestyle as we understand them, may not if urgent and important actions are not taken. We are now all climate lawyers and must advise our clients accordingly.

### New York's Legislative Response to Climate Change

New York State, however, has been at the forefront of addressing a changing climate. In 2019, the Community Leadership and Climate Protection Act became state law and it set ambitious goals to address climate change. Article 75 of the Environmental Conservation Law, codifies these legal mandates that include a 40% reduction in greenhouse gases by 2030 and an 85% reduction by 2050. The law requires that 70% of the State's energy is to come from renewable energy sources by 2030, and 100% emission free electricity by 2040. Six gigawatts of energy storage will now be required by 2030. For context, a single gigawatt of constant electricity can power approximately 750,000 homes each year.<sup>5</sup>

The permitting and approval process for these renewable energy systems can take a number of years to complete. The time necessary for approvals authorizing construction, and the construction process itself can also be costly. Some larger scale renewable energy projects, such as off-shore wind turbines, and likely other larger scale installations of renewable systems, are running into cost concerns.<sup>6</sup> These cost issues are resulting in companies seeking renegotiation or adjustments to existing contracts for the construction and operation of these systems.<sup>7</sup>

Nonetheless, given the significant impacts and risk to Long Island and other communities, the State's legal commitment to aggressive installation targets remains state law. In fact, State leaders continue to emphasize the need to accelerate the efforts to increase renewable energy capacity.<sup>8</sup> The State Comptroller has noted that additional efforts to streamline the permitting and interconnection process are necessary and that in terms of reaching the State's legal mandates, in 2022, approximately 29% of electricity in New York was from renewables breaking down to 25% wind and solar and 75% hydroelectric.<sup>9</sup>

The scope and scale of the efforts to transition to a renewable energy-based economy are often focused on wind turbines in the New York Bight south of Long Island.<sup>10</sup>

In fact, there has been considerable progress in the approval of some of the infrastructure needed for these turbines, but the permitting and review process is ongoing for others. For example, the South Fork Wind Farm in East Hampton recently installed its first turbine foundation, and when completed will bring substantial economic benefits to the communities hosting transmission lines.<sup>11</sup> Other communities, such as in Long Beach, are still involved in the applicant review process, addressing environmental issues and concerns of the local communities which are vital and necessary parts of the approval process.<sup>12</sup> There has also been issues regarding the installation and operation of wind turbines, raised by some, regarding impacts to the ocean environment.<sup>13</sup>

A key area of the renewable energy transition involves the need for storage of energy which will be part of the larger energy system and the electrical grid, allowing wind and solar energy to be stored for use during intermittent periods of power generation from these systems, or situations where additional energy is needed to meet peak energy demand. Battery energy storage will be a major component of the future energy system powering Long Island homes, schools, government, and businesses.

The State has not only made a commitment to the installation of these systems in communities throughout Long Island, but it has also made an ongoing commitment to ensure that battery safety issues are addressed and resolved. There have been local community concerns regarding safety in battery siting issues, and larger battery storage system companies, continue to focus on education concerning fire safety during the siting and permitting process. Although safety incidents such as fire have been rare with these storage systems, there have been incidents, such as one recently in East Hampton, which have raised concerns even though it was safely addressed and contained.<sup>14</sup> Governor Hochul is convening an interagency Fire Safety Working Group in response to fire incidents at these facilities this summer.<sup>15</sup>

### Highlighting Long Island's Renewable Energy Developments at the NCBA

Earlier this year, the Environment Committee and the Municipal Law and Land Use Committee of the Nassau

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County Bar Association held an event to address the developing area of approval, installation and operation of battery systems issues on Long Island. The very successful Dean’s Hour event was titled “Meeting The Challenges of Battery Storage for the Renewable Energy Needs of Long Island Communities.” It brought together leaders in the renewable energy industries to discuss the local municipal and state permitting and approval processes for these technologies and to discuss the technical aspects of these systems.

The topics and participants included:

**Battery Energy Storage Systems: Technology Overview and Use Cases**

Phil Denara, Senior Manager of Development, Key Capture Energy

Mr. Denara discussed battery energy storage systems and how New York’s legal mandate for reduction of climate impacts will rely upon these systems. Battery systems, he noted, will support Long Island’s clean energy transition. He also discussed key siting considerations for municipalities including, but not limited to, where can battery storage be best located and what are some of the difficulties encountered during the site selection and approval process.

**Environmental Issues with Battery Storage Systems Siting**

Scott McBurney, Senior Project Manager, Environmental Design & Research, Landscape Architecture, Engineering and Environmental Services, D.P.C.

Mr. McBurney discussed permitting issues and their complexities for battery storage projects through state permitting processes. He discussed the recently created Office of Renewable Energy Siting process created specifically for larger renewable facilities, the Department of Public Service process, the issues associated with the State Environmental Quality Review Act

review process and permitting processes under local laws.

**Legal Issues: State and Local Context; Zoning Issues for Battery Storage Systems**

James Muscato, Partner, Environmental and Energy Law, Young/Sommer LLC

Mr. Muscato discussed local zoning issues that could directly apply to the regulation of battery energy storage projects in addition to State permitting rules under the Public Service Law. Battery energy storage systems can differ in terms of size and capacity, but they can face common zoning and land use issues. The presentation also reviewed the model local law prepared by the New York State Energy, Research, and Development Authority for energy storage and common zoning questions.

**Public Health and Safety Issues: Addressing Fire Safety Considerations for Battery Storage Systems**

Paul Rogers, Co-Founder, Energy Safety Response Group (ESRG) Nicholas Petrakis, Senior Consultant, Energy Safety Response Group (ESRG)

Mr. Rogers and Mr. Petrakis focused on public safety, and particularly fire safety as key components for community consideration in the battery energy storage systems siting process. They note, however, that there remain concerns with local residents and town officials. The ability of safety features associated with these systems are well known in the industry, but not publicly, and need to be explained and articulated for successful permitting processes. They explained fire safety testing, and the regulatory approach to address fire safety issues and stressed that these issues need to be properly explained at local board meetings for timely consideration of battery storage systems. ⚡

1. Phoenix ends 31-day streak of highs at or above 110 degrees — by reaching 108, NPR (Aug. 1, 2023),

available at <https://tinyurl.com/5fsspf5n>; Heat dome’s scorching temperatures in Texas expected to expand across US, The Guardian (June 27, 2023), available at <https://tinyurl.com/54hkd4k>; At least a dozen dead as heat dome bakes southern US, BBC News (June 29, 2023), available at <https://tinyurl.com/4fu2xkpj>.

2. Canada’s Wildfires Are a Warning of the East Coast’s Smoky Future, Scientific American (June 13, 2023), available at <https://tinyurl.com/5c4mxux8>; Canada wildfire season is now the worst on record, BBC News (June 29, 2023), available at <https://tinyurl.com/478b63m7>.

3. If completely melted, the increase could be 20 feet. “Long-lost Greenland ice core suggests potential for disastrous sea level rise,” July 20, 2023, available at <https://tinyurl.com/2p8smw4r>.

4. Shoreline Mileage Of the United States, NOAA Office for Coastal Management available at <https://tinyurl.com/5bmjy9x2>; ; Life both big and small, returns to NYC’s 500 miles of coastline, National Geographic, available at <https://tinyurl.com/5n873ffp>.

5. Gigawatt: The solar energy term you should know about, CNET.com (Nov. 16, 2021), available at <https://tinyurl.com/43cz73fe>.

6. BP and Equinor Could Cancel US Offshore Wind Projects, OffshoreWIND.biz (Aug. 1, 2023), available at <https://tinyurl.com/3c5vfeff>.

7. Offshore wind developers ask for more money from ratepayers, Politico.com (July 7, 2023), available at <https://tinyurl.com/2wkv4kk>.

8. DiNapoli: State Needs to Supercharge Efforts to Meet Renewable Electricity Goals Office of the New York State Comptroller (Aug. 1, 2023), available at <https://tinyurl.com/4p8tvxs>.

9. Renewable Electricity in New York State: Review and Prospects, August 2023, available at <https://tinyurl.com/458bjer2>.

10. U.S. offshore wind auction draws record \$4.37 billion in bids, Reuters (Feb. 28, 2022), available at <https://tinyurl.com/2rjtpje4>.

11. South Fork Wind Installs First Offshore Wind Turbine Foundation and U.S.-Built Substation in New York State, NYS Energy Research and Development Authority (June 23, 2023), available at <https://tinyurl.com/ycoxfs78>; East Hampton Town Reaches Payment Agreement with South Fork Wind Farm Developers, Dan’s Papers (Sept. 10, 2020), available at <https://tinyurl.com/hbv2pa87>; South

Fork Wind Farm, Town of East Hampton, available at <https://tinyurl.com/bdhd9dah>.

12. Residents in the Five Towns express their concerns over Equinor Wind project, LIHerald.com Five Towns (July 23, 2023), available at <https://tinyurl.com/ytrnckm9>.

13. Addressing Misinformation on Offshore Wind Farms and Recent Whale Mortalities, Energy.gov (Apr. 28, 2023), available at <https://tinyurl.com/3n63bxw2>.

14. After Fire at Substation, New Battery Worries, The East Hampton Star (July 6, 2023), available at <https://tinyurl.com/5n8pxy6z>.

15. A number of state agencies will be involved in the Fire Safety Working Group, including the Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control, the New York State Energy Research and Development Authority, the New York State Department of Environmental Conservation, the Department of Public Service, and the Department of State. Governor Hochul Convenes Inter-Agency Fire Safety Working Group Following Fires In Jefferson, Orange, And Suffolk Counties, NYS Energy Research and Development Authority (July 28, 2023), available at <https://tinyurl.com/5n6r7eyr>.



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