



REPORT BY THE ENERGY COMMITTEE

RECOMMENDATIONS RESPECTFULLY SUBMITTED TO THE BIDEN-HARRIS ADMINISTRATION

The New York City Bar Association (City Bar) through its Energy Committee writes in support of the bold policy goals that your administration has set to address the climate crisis by requiring, facilitating and encouraging a transition to a clean energy economy. We are greatly encouraged that the Biden-Harris Administration recognizes the magnitude of the climate crisis and is prioritizing responses to address it. Those responses substantially align federal climate and energy policy goals with those of New York State and City. It is our hope, and our humble request, that your administration will support meaningful federal-state cooperation, so that our collective achievements as a nation can be greater than the sum of their parts.

Cooperative federalism has several merits with special relevance to New York State and City's common goal of achieving a realistic, cost-effective, orderly, and just energy transition to clean resources.

In general, cooperative federalism enables state and federal actors to divide up the labor of formulating and implementing a regulatory program in a way that draws on state and federal agencies' respective capacities and yields a result consonant with the aims of both. And, in the event that state and federal policy aims are somewhat (or wholly) dissonant, cooperative federalism provides a framework for reconciling those positions without causing a breakdown of program elements recognized as valuable by both sides. In the context of this critical energy transition in particular, cooperative federalism is especially important for the simple reason that neither state nor federal actors are capable of doing independently everything that transition demands. Moreover, we urge the seeking of common ground on disputed federal-state energy issues so as to achieve these important goals.

The table below compiles an illustrative list—not an exhaustive one—of areas of energy policy in which New York State and City laws, regulations, and other decisions align with components of Executive Orders (EOs) issued by the Biden-Harris Administration in its first months in office. Those items include sections of New York's Climate Leadership and Community Protection Act (CLCPA), Public Service Law (PSL), Environmental Conservation Law (ECL), as well as actions taken under the National Environmental Policy Act (NEPA) and Federal Power Act (FPA).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Table 1. Recent Legislative and Regulatory Actions on Key Energy Policy Areas

Subject	New York City / State	Federal
Clean energy infrastructure deployment	<ul style="list-style-type: none"> • CLCPA § 4, PSL § 66-p • Accelerated Renewable Energy Growth and Community Benefit Act of 2020¹ • Clean Energy Standard (as amended)² 	<ul style="list-style-type: none"> • The American Jobs Plan³ • EO 14008⁴ <ul style="list-style-type: none"> § 207. Renewable Energy on Public Lands and in Offshore Waters § 213. Sustainable Infrastructure
Resilience of critical energy infrastructure	<ul style="list-style-type: none"> • Public Service Commission (PSC) Order directing utilities to conduct climate change vulnerability assessments⁵ 	<ul style="list-style-type: none"> • American Jobs Plan • EO 14008 <ul style="list-style-type: none"> § 211. Climate Action Plans and Data and Information Products to Improve Adaptation and Increase Resilience
Accounting for the cost of greenhouse gas emissions	<ul style="list-style-type: none"> • CLCPA § 2, ECL § 75-0113: Value of Carbon • Department of Environmental Conservation’s Guidance Establishing a Value of Carbon⁶ 	<ul style="list-style-type: none"> • EO 13990⁷ <ul style="list-style-type: none"> § 5 Accounting for the Benefits of Reducing Climate Pollution § 7(e) Revoking draft guidance on consideration of greenhouse gas emissions under NEPA • Interim estimate of the social cost of carbon
Reducing energy use in and greenhouse gas emissions from buildings	<ul style="list-style-type: none"> • PSC Order authorizing energy efficiency and building electrification portfolios through 2025⁸ • NYC Climate Mobilization Act⁹ 	<ul style="list-style-type: none"> • American Jobs Plan • EO 13990 <ul style="list-style-type: none"> § 2(iii) Ordering rescission of reduced energy efficiency standards for appliances and buildings

¹ 2020 N.Y. Laws c.58. For the full text of the act, see Section JJJ of <https://nyassembly.gov/2020budget/2020budget/A9508b.pdf>. (All site last visited April 7, 2021).

² Order Adopting Modifications to the Clean Energy Standard, Case 15-E-0302 (Oct. 15, 2020), <https://on.ny.gov/3wiOkN5>.

³ See Fact Sheet: The American Jobs Plan (Mar. 31, 2021), <https://bit.ly/31C46Vs>.

⁴ Executive Order on Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021), <https://bit.ly/3ubcOxO>.

⁵ Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint Proposal, Case 13-E-0030 (Feb. 21, 2014), <https://bit.ly/3fvcAG4>.

⁶ N.Y. Dep’t of Env’t Conservation, Establishing a Value of Carbon: Guidelines for Use by State Agencies (2020), <https://on.ny.gov/3u8g3hI>.

⁷ Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (Jan. 20, 2021), <https://bit.ly/3sGA9z8>.

⁸ Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios through 2025, Case 18-M-0084 (issued Jan. 16, 2020).

⁹ Climate Mobilization Act, N.Y.C. Council 97 (N.Y. 2019), <https://on.nyc.gov/3m4MyKM>.

Scrutiny of decisions authorizing new energy infrastructure	<ul style="list-style-type: none"> • CLCPA § 7 • Rejection of Williams pipeline¹⁰ • PSC long-term gas planning proceeding¹¹ 	<ul style="list-style-type: none"> • EO 13990 § 6 Revoking the March 2019 Permit for the Keystone XL Pipeline • Federal Energy Regulatory Commission Notice of Inquiry on 1999 interstate pipeline certification policy statement¹²
Just energy transition	<ul style="list-style-type: none"> • CLCPA § (establishing Just Transition Working Group) 	<ul style="list-style-type: none"> • American Jobs Plan • EO 14008 §§ 217 & 218. Empowering workers through revitalizing energy communities
Environmental Justice	<ul style="list-style-type: none"> • Environmental Justice Act, ECL art. 48 (establishing Environmental Justice Working Group)¹³ 	<ul style="list-style-type: none"> • American Jobs Plan • EO 14008 §§ 219–23. Securing environmental justice and spurring economic opportunity

* *Public Service Law (PSL); Environmental Conservation Law (ECL)*

We hope that these examples of overlapping state and federal priorities can serve as a starting point for identifying immediate opportunities for collective action. In addition, we hope that your administration will consider the ideas presented here as it begins developing policy and strategy related to climate change and the energy transition. There is much important work to be done and we look forward to your leadership and partnership on these critical issues.

If our Committee can be of assistance in any way, we will be honored to provide support.

Energy Committee
 Rossalyn Quaye, Chair

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¹⁰ Letter from Daniel Whitehead, N.Y. Dep’t Env’t Conserv., to Joseph Dean, Transcontinental Gas Pipe Line Co., LLC (May 15, 2020), <https://on.ny.gov/39x28K9>.

¹¹ Order Instituting Proceeding, Case 20-G-0131 (Mar. 19, 2020), <https://on.ny.gov/39rHN96>.

¹² Notice of Inquiry: Certification of New Interstate Natural Gas Facilities, 174 FERC ¶ 61,125 (2021), <https://bit.ly/2OdOmou>.

¹³ AB A1564, <https://legislation.nysenate.gov/pdf/bills/2019/A1564>.