

Earthjustice attorney discusses judge's ruling that N.Y. must issue regulations on climate law

[Capitol Tonight](#)

Last week, in response to a lawsuit filed by multiple environmental groups arguing the [state is violating its nation-leading climate law](#), a state Supreme Court judge ruled that the New York state Department of Environmental Conservation has until Feb. 6, 2026, to issue regulations that comply with the 2019 Climate Leadership and Community Protection Act (CLCPA).

According to Gov. Kathy Hochul, the ruling runs counter to her efforts to keep the state affordable.

In a statement emailed to *Capital Tonight*, the governor said her administration would be looking at a variety of responses to the lawsuit, including working with the Legislature to modify the CLCPA.

"My job is to ensure we have enough power to keep the lights on, keep rates affordable, and attract major economic development projects," the statement said. "New York has been, and will continue to be, a leader in climate action, but the judge's decision fails to factor in the realities of today that include a federal government hostile to clean energy projects, the continuing impacts of post-COVID high inflation, and potential energy shortages expected downstate as soon as next year. We plan to review all our options, including working with the Legislature to modify the CLCPA and appeal, in order to protect New Yorkers from higher costs."

Rachel Spector, deputy managing attorney at Earthjustice, joined *Capital Tonight's* Susan Arbetter to discuss the suit.

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Susan Arbetter (**SA**): A state Supreme Court judge ruled that New York is violating its 2019 climate law and it gave the Department of Environmental conservation until February 6th to issue regulations that comply with the law.

SA: We're joined tonight by Rachel Spector she's the deputy managing attorney at Earth Justice, one of the groups that did filed that lawsuit. Great to see you Rachel.

Rachel Spector (**RS**): Thanks for having me

SA: So, remind our viewers if you could about what the 2019 climate law requirements.

RS: Sure so the 2019 climate law which is called the Climate Leadership and Community Protection Act set targets for reducing emissions. There's two benchmarks in 2030 and in 2050. This the law set forth a process for the state to determine how we're going to get there. There were multiple steps in this process. First it convened a Climate Action Council to gather leaders from business labor and state agencies to figure out the best way to do it. Then it told DEC "Take those recommendations and create regulations that will ensure we're reducing emissions over time to reach these targets". It set a deadline for DEC to issue those regulations of January 4, 2024. DEC did not meet that deadline. The state had

been working on regulations but instead of issuing regulations earlier this year as had been expected the Governor announced they were walking back.

SA: All right so the Governor sent us the following statement that I'm hoping you can respond to. She said quote:

My job is to ensure we have enough power to keep the lights on, keep rates affordable and attract major economic development projects. New York has been and will continue to be a leader in climate action, but the judge's decision fails to factor in the realities of today that include a federal government hostile to clean energy projects, the continuing impacts of post COVID high inflation, and potential energy shortages expected downstate as soon as next year. We plan to review all of our options including working with the legislature to modify the CLCPA and appeal in order to protect New Yorkers from high costs

SA: What is your response?

RS: Well, there's two responses here. First of all, the legislature considered all of these factors when it enacted the CLCPA and it is not the Governor's job or executive agency's job to second guess what the legislature did. It is the executive's job to implement the law.

Roger Caiazza (RC): The academic studies of the energy system that formed the basis of the target and schedule of the Climate Act were [wrong](#) because they claimed no new technologies would be needed. Since the passage of the Climate Act all the organizations responsible for electric system reliability agree that new Dispatchable Emission-Free Resource (DEFR) are needed. The legislature did not consider that requirement and the impact of potential energy shortages expected downstate. The claim that the legislature considered the impacts of COVID before the pandemic is obviously incorrect.

SA: Before we get to number 2, Rachel how could the legislature in 2019 have foreseen a Trump Administration a federal government administration that is now actually going through energy policy and saying don't use words like climate change?

RS: Well the CLCPA was passed under the first Trump Administration. In fact it was meant to show that the state of New York was ready to lead where the federal government was not able to do so and was not willing to do so. Unfortunately, we are in the same position today and it's more important than ever for New York and other states to take leadership when our federal government is failing us on this front.

RC: It is disappointing that Climate Act proponents do not concede that the political landscape has changed since the time of the first Trump Administration. Clearly a lot of the money and programs initiated at the Federal level are not going to be available. Equally frustrating is that proponents never concede that New York cannot solve this problem on its own so surely adjustments to at least the schedule could be considered.

SA: Alright so that was number 1, what was number 2?

RS: Number 2 is we recognize that there that it is complicated to do this, but we think it's possible. We think it's critical to do it. In fact that acting on climate, putting forward policies that will increase energy

efficiency, increase our use of renewable energy ultimately this will be beneficial for New Yorker's health and their wallets.

SA: Alright what do you think the counter argument is to Governor Hochul's allegation that her responsibility is to ensure that New York doesn't have an energy shortage which is just what the New York independent system operator said last week in two separate reports

RS: Well, this is a complicated issue, and I could talk for a while about what the NYISO put forward I will say New York is not facing an energy crisis and the reports that are coming out are extremely conservative. I will also say that there is flexibility built into our climate law. There is nothing in the climate law that's going to require anyone to shut off energy generation facilities at any point if they are necessary to keep the lights on.

RC: Thomas Sowell has been quoted as saying: "It is hard to imagine a more stupid or more dangerous way of making decisions than by putting those decisions in the hands of people who pay no price for being wrong". In this instance, there is nothing more stupid or dangerous than ignoring the experts who will pay the price if there are problems with the electric system. The arrogance of the environmental organizations who disparage NYISO knows no bounds.

Also note that if the cap-and-invest approach favored by Earthjustice were to be implemented with strict adherence to the emissions targets that State agencies think will not be met the only option to ensure compliance is to shut off energy generation facilities. The State would have to step in and declare an emergency to keep the lights on or provide fossil fuels to homes.

SA: Even peaker plants?

RS: That is not what is in the climate law now. New York can starting today and going forward do a lot to make sure we have ample energy and most of what it should be doing is investing in technologies of the future like battery storage, new transmission lines, renewable energy, distributed solar, and energy efficiency. All of these measures are within the power of the state to implement right now and they will save New Yorkers money.

RC: This encapsulates the current plan. Build as much as possible of these technologies as fast as possible and hope it works out. I am convinced that this approach will do [more harm than good](#).

SA: This is what I've been hearing from viewers. Just last week I got a bunch of letters on this when the federal government was on board with fighting climate change they seem to be more willing to help fight the fight but and I'm paraphrasing here but with the rollbacks on clean energy projects it seems like to them the state is on the battlefield alone in a fight that will cost New Yorkers more money in the short term. What is your thinking on that and how would you reply to those viewers.

RS: I think what we need to do is demonstrate to New Yorkers that renewable energy and energy efficiency measures are going to help them. The only way we can demonstrate that is by moving forward and implementing these measures. I think people will see the benefits once we start doing that. I know our clients are eager to work with the administration to figure out a way to move forward

to issue these regulations to make sure that we do so in a way that's going to protect and benefit everyday households in New York.

RC: Despite overwhelming evidence that there are issues with the mindless plan to just build stuff and hope, Earthjustice proposes to double down. They are in a hole and cannot stop digging.

SA: Does it alarm you Rachel that the governor said that she might go back to the legislature and you know tinker with the CLCPA?

RS: It does. I think the CLCPA is an important commitment that New York made again during the last Trump Administration and we should not mess with what we have. We should instead work together to find a way forward.

RC: It is time to modify the Climate Act to incorporate clear standards for affordability, reliability, and environmental impacts, track those metrics, and then modify or delay implementation goals when those metrics are exceeded.

SA: We've been speaking with Rachel Spector. She's the deputy managing attorney at earth justice about a ruling by a judge last week which said that the state is violating its own 2019 climate law. Rachel thank you