

ARE RENEWABLE AND ENERGY STORAGE DEVELOPERS CAPTURING THE VALUE OF NEW YORK CITY'S NEW BUILDING EMISSIONS LAW?

Hodgson Russ Renewable Energy Alert
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Last spring, New York City enacted one of the most ambitious climate change laws in the country, Local Law 97. It establishes binding greenhouse gas emission limits and applies to three types of “covered buildings,” which the rule describes as:

- (1) buildings with over 25,000 gross square feet of floor area,
- (2) two or more buildings on the same tax lot that together exceed 50,000 gross square feet of floor area and
- (3) two or more buildings held in the form of condominium ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet.

Local Law 97 also identifies the types of buildings that are exempt from its application, as well as those such as rent regulated accommodation and qualifying places of worship which may comply by implementing certain prescriptive energy conservation measures.

According to the Urban Green Council, Local Law 97 would cover around 50,000 buildings, constituting about 60% of the City’s building area. The law aims to achieve a 40% reduction in citywide emissions by 2030 when compared to 2005 and an 80% reduction by 2050. Building owners who exceed their building emissions limits will be subject to civil penalties beginning in 2024.

In addition to energy efficiency measures, the law creates several alternative ways of achieving compliance. From 2024 to 2029, building owners can get credit for the use of onsite clean distributed energy resources (DERs), including energy storage, solar, wind, hydropower, and “geothermal wells or loops.” The Department of Buildings will promulgate rules for how to calculate these deductions, with those for energy storage resources based on the system’s size and “its ability to reduce greenhouse gas emissions during peak periods.”

Developers of DERs should note the value their installations will create under Local Law 97 when negotiating with building owners. Because use of the onsite resource will confer a compliance benefit on the owner – in addition to whatever clean

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electricity is generated – that benefit should be incorporated into the contractual terms between the relevant parties. For example, a building owner might be willing to lease his or her roof area to a developer for a lower price so that the building can use the onsite resource and avoid incurring Local Law 97 penalties. For the same reason, the owner could agree with the developer to share any financial benefit realized by the DER from 2024 to 2029, or simply offer to pay more at the outset to have the solar panels or battery installed onsite. The benefit to the owner likely will vary depending on the individual building's emission levels and the cost-effectiveness and availability of other compliance mechanisms.

It is worth noting that high-emission buildings are not the only beneficiaries of onsite DERs; low-emission building owners, even those already in compliance with Local Law 97, could also potentially derive additional value from installing DERs. This is because Local Law 97 has authorized a study on the feasibility of a citywide trading scheme for greenhouse gas emissions from buildings. The study, due no later than January 1, 2021, will “include an approach to a marketplace for credit trading, pricing mechanisms, credit verification, and mechanisms for regular improvement of the [trading] scheme.” Such a scheme, if implemented, could allow super energy-efficient buildings to trade any excess emission credits to owners who are having difficulty meeting Local Law 97's emission limits. To the extent onsite DERs would allow building owners to sell additional emission credits through this trading scheme (and receive compensation), such owners stand to benefit from the DERs installation and use.

Apart from using onsite DERs, building owners may also purchase renewable energy credits (RECs) to reduce the amount of emissions they must report. However, as Peter S. Ross discussed at a recent Greening the Grid event, Local Law 97 has its own definition of a “REC,” distinct from the New York State Public Service Commission's, and restricts which REC purchases would count towards a deduction. Importantly, the NYC RECs must come from NYISO (New York Independent System Operator) capacity resources located in or directly deliverable to New York City and they must be “recognized and tradable or transferable within national renewable energy markets or the New York Generation Attribute Tracking System.” Given these requirements, RECs produced by an upstate solar or onshore wind farm would likely be ineligible. However, large-scale Canadian hydropower transmitted through the fully permitted, yet-to-be-built Champlain Hudson Power Express, for example, could potentially qualify. [1]

To learn more about how developers, building owners, and other stakeholders can capitalize on the value of Local Law 97, please contact a member of Hodgson Russ's Renewable Energy Practice. You can find us at <https://www.hodgsonruss.com/practices-industries-147.html>

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[1] Building owners may also get a deduction under Local Law 97 for purchasing greenhouse gas offsets in years 2024 to 2029, up to 10% of the annual building emissions limit.