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I. Introduction

In New York, there were a few developments in oil and gas law during the period of August 1, 2021, to July 31, 2022. The New York courts were quiet with only one notable case, but there were a couple of statutory legislation and administrative regulation that were aimed at reducing the presence of oil and gas in the state. Based on these actions, New York is likely to continue to push further in limiting the taxation of gas sales for customers and impose tougher restrictions unto gas entities to fund projects on maintaining and improving state infrastructure.

II. Statutory Law

A. New York to Require Gas Corporations to File Annual Gas Safety Reports

On January 11, 2022, Assembly Member Amy R. Paulin for the 88th District of New York, introduced Assembly Bill 129, which proposes to amend the public service law[1] by adding section 66-s. This section will require gas corporations to file annual gas safety reports to the department of public service to monitor each gas corporation's pipeline replacement projects and all other activities, increasing the transparency, accountability,

1. N.Y. Pub. Serv. Law § 66, et seq. (McKinney).

and public safety between the companies and the public. Each annual report will include, at a minimum, (i) a description and explanation of the strategic planning and decision-making methodology used to determine the prioritization of pipeline replacement projects, (ii) the corporation's operation and maintenance activities related to gas safety, inspections of its intrastate transmission and distribution lines, and (iii) a list of pipeline replacement projects completed in the last year by the company's employees and contractors.[2] This bill passed the assembly on April 6, 2022, and was delivered to the New York Senate, which then substituted it over its similar bill, Senate Bill 1380.[3] The senate voted to pass this bill on May 24, 2022, where it was then returned to the assembly.

B. New York to Require Gas Corporations to File a Plan Addressing Aging Leaking Pipelines

On February 9, 2022, Assembly Member Alicia Hyndman for the 29th District introduced Assembly Bill 9240, which proposes to require gas corporations to address the aging or leaking pipelines within their service territory and create plans for pipeline replacement in an effort to reduce the amount of slower or less hazardous gas leaks. Currently, while federal requirements address pipeline leaks, they are limited to hazardous leaks alone. This bill attempts to create a higher standard of safety for pipeline infrastructure and limit the amount of natural gas that leaks out of faulty pipelines. Proposed plans to address the pipelines will, at a minimum, include (i) a listing of eligible pipeline replacements and materials deemed to be leak-prone by public service commission; (ii) an anticipated timeline of each replacement project; (iii) the estimated costs; (iv) rate change requests; and (v) a description of customer costs and benefits. Upon acceptance of the plan by the public service commission, the gas corporation will be allowed to recover the estimated costs of the projects included in the plan, including depreciation, property taxes, and return associated with the plan.[4]

C. New York Shows Strong Intentions to Further Limit the Taxation and Profiting of Gas Sales

In April of 2022, Senate Bill 8753 and Assembly Bill 10099 were introduced in their respective houses, seeking to amend the public service law by adding Section 72-b, which intends to impose a moratorium on

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2. H.B. 129, 244th Gen. Assemb., Legis. Sess. (NY 2022).
3. S.B. 1380, 244th Gen. Assemb., Legis. Sess. (NY 2022).
4. H.B. 9240, 244th Gen. Assemb., Legis. Sess. (NY 2022).

increasing gas prices, rates, and charges for a period of two to four (2-4) years.[5] Proponents for these bills believe that New York residents experienced a significant surge in their gas prices over this past winter, with an estimated $1.2 billion currently owed to utility companies by New York residents and is expected to raise even more in the upcoming years. Since their introduction, Senator Peter Oberacker (R/C-Schenevus) and Senator Fred Akshar (R/C – Southern Tier) have also introduced Senate Bill 8483, which proposes to suspend the state's gas tax and divert funds collected when reinstated directly toward road and bridge repair.[6] Additionally, on May 11, 2022, the Department of Taxation and Finance issued notice N-22-1 that created a suspension of excise tax, prepaid sales tax, and state sales and use taxes on diesel motor fuel, beginning June 1, 2022, and continuing through December 31, 2022.[7] It may only be a matter of time before something more permanent is put in place by the legislature.

D. New York Attempts to Establish the Climate Change Adaptation Cost Recovery Program and the Climate Change Adaptation Fund

On May 25, 2022, state Senator Elizabeth Krueger for the 28th District introduced Senate Bill 9417, which proposes to add to the "Climate Change Superfund Act" by establishing the climate change adaptation cost recovery program and the climate change adaption fund, in an effort to "avoid, moderate, or repair damage caused by climate change." The bill, if enacted, would require coal, oil, and natural gas entities to pay a share of the cost for green infrastructure projects to remediate environmental damage to lands and waters. As noted in the Act, in 2022, the costs of climate change recovery were paid by the taxpayers. Through this bill, however, entities that have contributed significantly to the buildup of greenhouse gases will brace a share of the costs needed for infrastructure investments to adapt to climate change. Specific methods for determining liability and proportion of fault are left unspecified, allowing the state Department of Environmental Conservation to adopt the "best available science" and then notify the liable entities of their total amount owed to the state. The money collected would be placed in the new Climate Change Adaptation Fund, which will be used for funding these green infrastructure projects and combatting the negative impacts of climate change.[8] A similar bill, A.B. 10556, was also introduced to the New York

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5. S.B. 8753, 244th Gen. Assemb., Legis. Sess. (NY 2022); H.B. 10099, 244th Gen. Assemb., Legis. Sess. (NY 2022).
6. S.B. 8483, 244th Gen. Assemb., Legis. Sess. (NY 2022).
7. N.Y. Dep't of Tax'n and Fin., N-22-1 (N.Y. 2022).
8. S.B. 9417, 244th Gen. Assemb., Legis. Sess. (NY 2022).

Assembly on July 6, 2022, by Assembly Member Jeffrey Dinowitz of the 81st District.[9]

E. New York Attempts to Enact the Empire State Windfall Profits Tax Act of 2023

On June 29, 2022, state Senator Kevin Parker, for the 21st District, introduced Senate Bill 9491, which proposes to impose an excise tax on barrels of taxable crude oil on taxpayers whose profits each financial quarter are more than the taxpayer's average annual profits from January 1, 2015, through December 31, 2019. This Bill intends to protect state citizens from seeing disproportionate increases in transportation and housing expenses as other expenses, such as food and services, also increase, and establish the "Protect New Yorkers From Surges Fund." With the fund, the windfall profit taxes would be paid out of the fund to state residents in the form of rebates or tax credits for eligible individuals. Eligible individuals will be able to claim an income tax credit every year to an amount equal to the sum of the gasoline price rebate amount for calendar quarters beginning in a taxable year. Local municipalities will also be able to impose an excise tax on any covered taxpayer in a further effort to reduce cost and tax credits within the local and state economies.[10]

F. Local Legislative Developments

1. New York City to Phase Out Fossil Fuels

On December 22, 2021, New York City enacted Int. 2317-A into law which requires the phasing out of fossil fuels in new buildings. The bill requires buildings constructed in 2023 to adhere to strict emission limits. By 2027, all new buildings constructed in the city must be fully electric. There are few exceptions to these strict requirements. New York City's goal in signing this bill is to reduce carbon emissions and phase out fossil fuels. This will be interesting to watch how this plays out in the near future.[11]

2. New York Proposes Plan to Phase Out Fossil Fuels

In an attempt to follow New York City's lead, Governor Kathy Hochul announced on January 5, 2022, her plan to ban gas-hookups for new building construction. The plan would similarly begin to phase out fossil fuels by 2023, and then pursue to eliminate the use of fossil fuels for new building

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9. S.B. 10556, 244th Gen. Assemb., Legis. Sess. (May 11, 2022).
10. S.B. 9491, 244th Gen. Assemb., Legis. Sess. (NY 2022).
11. N.Y.C., N.Y., Ordinance Int. 2317-A (Dec. 22, 2021).

construction by 2027. This statewide plan would attempt to reduce carbon emissions and phase out the use of fossil fuels in the state. This policy proposal has not yet been passed by either house of the state legislature.[12]

III. Administrative Law

A. New York Announces New Regulations for Methane Leaks

On February 2, 2022, Governor Hochul announced finalized regulations that attempts to reduce emissions from oil and natural gas infrastructure in the state. The regulations were finalized by the State Department of Environmental Conservation. New York currently has 27 underground natural gas storage sources and 3,411 active oil wells along with 6,729 active gas wells. The regulations passed reduce the venting of natural gas to the atmosphere. Additionally, the regulations contain leak detection and repair requirements for oil and gas wells. To enforce these regulations, the Department of Environmental Conservation will conduct inspections.[13]

IV. Common Law

A. Appellate Court Grants Sole Ownership of Mineral Rights of Property Obtained to New Owner Upon Expiration of Reservation

On October 8, 2021, the New York Supreme Court, Appellate Division, issued its ruling on *BPGS Land Holdings, LLC v. Flower*, 198 A.D.3d 1344 (4th Dep't 2021), holding that the plaintiff, BPGS Land Holdings, LLC ("BPGS") was vested with all property rights to the oil, gas, and minerals on property obtained upon conveyance of property.[14] In this case, the original property owner, Michael Gordon, leased the oil and gas below his property in return for royalties and to be entitled to receive an allowance of free gas from any well drilled on the property. Gordon subsequently conveyed the property by quitclaim his right to obtain the "free gas" and share of the royalties to Frank Flower. In 1995, and in 2006 by corrected deed, Flower conveyed the property to Bemus Point Golf Club ("Bemus"), but reserved the "mineral, oil and/or gas rights contained" for a period of 20 years, which was listed in the contract of sale to expire on December 26, 2015. In 2017, after the expiration of the former property owner's reservation period, Bemus

12. GOVERNOR HOCHUL ANNOUNCES PLAN TO ACHIEVE 2 MILLION CLIMATE-FRIENDLY HOMES BY 2030 (2022), Governor Hochul Announces Plan to Achieve 2 Million Climate-Friendly Homes By 2030 - NYSERDA.

13. N.Y. COMP. CODES R. & REGS. 6 NYCRR Part 203 (2022).

14. BPGS Land Holdings, LLC v. Flower, 198 A.D.3d 1344 (4th Dep't 2021).

conveyed the property to BPGS, together "with the appurtenances and all the estate and rights of [Bemus] in and to the said premises."[15] BPGS commenced an action seeking declaration that they are the sole owner of all the oil, gas, and mineral rights under the lease entered into by Gordon. However, Flower's daughter, Elizabeth S. Flower, moved to dismiss this action and claimed that Gordon severed his free gas rights through the original quitclaim and, thus, Flower did not convey free gas rights to Bemus and interest was assigned to her by his estate.[16]

The Chautauqua County Supreme Court ordered that Elizabeth Flower had a limited ownership interest in the gas lease. On appeal, the New York Supreme Court, Appellate Division, modified the order to grant BPGS sole ownership of the oil, gas, and minerals. In its opinion, the court concluded that "[t]he construction of deeds generally presents a question of law for the court to decide, and deeds must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument and is consistent with the rules of law."[17] Applying this standard, they concluded that the unambiguous language of the deed and contract of sale between Flowers and Bemus had transferred all oil, gas, and mineral rights in the property subject to the 20-year term reservation, which had expired prior to conveyance of property from Bemus to BPGS.[18] Thus, BPGS is the sole owner of all the oil, gas, and mineral rights arising from the oil and gas lease.

V. Other

A. The Federal Government Resumes Drilling on Federal Land

On April 15, 2022, the Biden Administration said it will resume selling leases to drill for oil and gas on federal lands. However, the government will offer limited acreage and companies will have to pay increased royalties to drill.[19] The federal government currently owns 0.8% or 230,992 acres of land in New York.[20] Given how little drilling the federal government is doing and

15. *Id.* at 1346.
16. *Id*.
17. *Id*. (Internal citations omitted).
18. *Id*. at 1347.
19. Josh Lederman & Zoe Richards, *Biden administration to resume leasing for oil and gas drilling on federal lands*, NBC NEWS (July 13, 2022, 3:43 PM), Biden administration to resume leasing for oil and gas drilling on federal lands (nbcnews.com).
20. *See how much land in New York is owned by the federal government*, STACKER (Jun. 30, 2022), See How Much Land in New York is Owned by the Federal Government | Stacker.

how little federal land there is in New York, it is highly unlikely for federal drilling to resume in New York anytime soon.

VI. Conclusion

Overall, there have been a few changes in oil and gas law in New York over the past year. As apparent above, New York is making various policy attempts to limit gas price increases and expand into infrastructure dedicated to limiting or even reversing climate change, as well as attempting to phase out fossil fuels in the state. It will be interesting to see how these actions progress through the next year.