
Even Facing A Pandemic, New York State Remains In The Grip Of The Green Movement

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One breakout political star of the Coronavirus crisis has been New York State Governor Andrew Cuomo. His daily briefings have been direct and succinct.

Cuomo often says that numbers will drive the policy. Unfortunately, in the energy context, the Governor has not always acted in this fashion. Last week, even in the face of the virus pandemic, his government made budgetary decisions that could hurt New York State's ability to react to a hypothetical new pandemic, or a resurgence of the present one.

In its Fiscal 2021 State budget, the New York Legislature codified a ban of hydraulic fracturing ("fracking") in New York State. Previously, Governor Cuomo and his predecessor had instituted a ban by gubernatorial initiative, leaving open the possibility of reversing course in the future. The codification of such a ban into law means it would take an act of the State Legislature to reverse it - a much tougher process.

While the New York fracking ban has had little real impact on natural gas development in the Northeast (except to New York's Southern Tier counties of Broome and Chemung, who sit upon rich shale gas deposits that could bolster their economy but are unusable), in recent years Governor Cuomo has gone further in implementing a so-called "Green Agenda." Using a little known section of the Federal Clean Water Act called the Section 401 Clean Streams Certification, Cuomo has blocked the construction of interstate gas pipelines preciously approved by the Federal Energy Regulatory Commission, the agency charged with rationalizing decisions made on interstate energy commerce. Cuomo's actions have made both the New York City metropolitan area and New England dangerously exposed in times of energy needs, as pipelines are the cleanest and most efficient means of transporting natural gas and oil, but a ban on pipelines in New York means the gas and oil cannot reach New England through the most direct route possible.

Governor Cuomo didn't stop there. Despite policies like the above that severely limit the importation into and use of natural gas in New York State, his government plans to shut down the two remaining reactors of the Indian Point Nuclear Power Plant in Westchester County, New York, which currently provide about 25% of New York City's energy needs. The first reactor is set to be mothballed this month.

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From where will New York get the energy to replace Indian Point? The Governor talks about using offshore wind farms, hydroelectric power from Canada, and other sources, but they remain theoretical – and there are many impediments to any of them eventually becoming reality. It would not be a stretch to wonder if the Governor is entrusting New York State's energy needs to hope and wishful thinking. If so, there couldn't be a worse time to do so.

If Downstate New York needs one thing right now, it's reliable energy. Nothing would turn the current COVID-19 calamity into a catastrophe quicker than rolling blackouts. To date, from an energy perspective New York has been fortunate. The general economic downturn combined with the oil price war between Russia and Saudi Arabia both have depressed demand for energy and driven down its price. In addition, the COVID-19 outbreak followed a mild winter as the Northeast warmed into spring. But things easily could have gone the other way, and still can.

Saudi Arabia's mercurial ruler Prince Muhammed Bin Salman and Russia's Vladimir Putin seemed on the verge of creating their own energy axis prior to the current spat. Nothing prevents them from doing so in the future. Should they agree on a production cut to stabilize the oil markets, and should the natural gas and oil bottlenecks caused by Governor Cuomo's pipeline policies help bankrupt American shale producers, which always remains a possibility in a severely collapsing economy wrought by COVID-19, then once again the United States could be at the mercy of foreign energy suppliers with their own political agendas for our indispensable energy needs.

Further, should the Coronavirus problem continue and even get worse as we head into periods where we need greater energy for air conditioning or heat, the current economic damage will only be magnified by the large energy costs we so far have avoided. To take it to the extreme, should New York, as in 2018, need to import energy from Russia despite having the world's richest natural gas fields three hours away in the Marcellus Shale region, who's to say if Putin will come to the rescue, and if he does what price would he charge?

None of this is out of the question or fanciful. The Spanish Flu epidemic of 1918 hit in three waves lasting from March 1918 to the summer of 1919. China already seems to be starting a second wave of COVID-19. During the first wave in the United States, Andrew Cuomo has taken a difficult situation handed to him and handled it well. Should it hit again, this time with no Indian Point providing nuclear power, no gas pipelines or in-State fracking providing natural gas power, and few American energy producers available to offset the cost of foreign energy, Governor Cuomo may have some real explaining to do.

ATTORNEYS MENTIONED

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