

OTHER AGENCIES

(a)

TURNPIKE AUTHORITY

Notice of Action on Petition for Rulemaking Petition to Adopt Rules Setting 2030 Greenhouse Gas Emission Reduction Targets, Consider Environmental Justice in Decision Making

N.J.A.C. 19:9

Petitioners: EmpowerNJ, BlueWaveNJ, Clean Water Action NJ, Delaware Riverkeeper Network, Don't Gas the Meadowlands Coalition, Environment New Jersey, Food & Water Watch, and the New Jersey Sierra Club.

Take notice that the New Jersey Turnpike Authority (the Authority) has denied the petition for rulemaking filed by EmpowerNJ, BlueWaveNJ, Clean Water Action NJ, Delaware Riverkeeper Network, Don't Gas the Meadowlands Coalition, Environment New Jersey, Food & Water Watch, and the New Jersey Sierra Club (the petitioners), as described below. The Authority received the petition on May 16, 2022, and the Authority published notice of receipt of the petition on July 5, 2022 in the New Jersey Register (54 N.J.R. 1343(a)).

The Petition

In sum, the petitioners' request that the Authority develop rules: (1) implementing Executive Order (EO) 274 (2021) by establishing a carbon reduction strategy to meet the 50x30 Goal; (2) requiring that any highway expansion project (Project) pass a climate impact test showing that the Project does not conflict with the strategy to reduce greenhouse gas emissions (GHGs) in the transportation sector by 50 percent below 2006 levels by 2030 (the 50x30 Goal) and the goal of reducing GHGs by 80 percent by 2050 as required by the Global Warming Response Act; (3) requiring a cost-benefit analysis for any Project that considers whether the Project would increase or decrease traffic and vehicle miles traveled, potential increases in budgeted construction costs, the social and health costs of carbon and other pollution, and alternatives to highway expansion, such as public transportation, repair projects, safe street projects, bikeways, and walkways; (4) requiring Environmental Justice to be considered in all of the Authority's decision-making as required by EO 23 (2018), and rejecting any Project that disproportionately harms already overburdened communities, as defined at N.J.S.A. 13:10-157 through 161; and (5) providing for a robust public participation process that meets the letter and spirit of EO 172 (1987).

The petitioner also stated as support: (1) the 50x30 Goal is New Jersey State Policy; (2) the accelerating climate change crisis; (3) vehicles are the largest source of greenhouse gas in New Jersey; (4) the additional pollution due to vehicle use; (5) Environmental Justice must be prioritized; (6) highway widenings do not reduce traffic congestion; (7) the spending associated with the Authority's highway expansion plans can be better utilized in other areas; (8) the Jersey City Highway Expansion (sic) project will not decrease traffic and will have a negative impact on the environment; (9) failure to adopt a carbon reduction strategy in line with Federal policy will make New Jersey ineligible for grants under the Infrastructure Investment and Jobs Act (the Bipartisan Infrastructure Law); (10) better alternatives to highway expansions exist; (11) the actions of other states show the correct and necessary transportation improvement environment to aid in the reduction of environmental impacts; and (12) the need and requirement for meaningful public input.

Authority's Response to Petition

The Authority respects the pervasive reality of climate change and its impact on the State's natural and man-made environments, and supports, through all facets of the Authority's operations, the State's commitment to address the climate crisis with a thoughtful and impactful strategy. To that end, the Authority, conscious of the impact of emissions from vehicles that travel the State's roadways daily, has led the way in the deployment of electric vehicle (EV) charging stations. To date the Authority, working with private partners, has deployed EV charging

stations at numerous service areas along its roadways to accommodate and, indeed, foster the use of EVs. The Authority has also commenced the acquisition of its own EV fleet for use by employees in carrying out the business of operating, maintaining, and improving the State's two major roadways.

Further, in its ongoing effort to support the Governor's Energy Masterplan, the Authority is in the process of evaluating the feasibility and deployment of solar renewable energy systems at strategic locations along Authority roadways. The Authority will continue to employ these and similar tools to combat climate change and all of its ancillary impacts as it evaluates and develops its future roadway modernization and repair projects.

The Authority denied the petition for the following reasons:

I. Compliance with EO 172 (1987)

EO 172 (1987) outlines a policy for implementing procedures designed to provide for maximum public comment from the public and stakeholders "as part of the transportation project development process for Turnpike Authority highway projects." In response to EO 172, the Authority adopted the *Policy and Implementing Procedures for Executive Order No. 172* (EO 172 Policy). Although EO 172 has expired, the Authority continues to utilize the EO 172 process for public engagement on proposed transportation projects, as memorialized in its EO 172 Policy.

The Authority's EO 172 Policy applies to "highway projects," which include new or a significant expansion of service areas, maintenance districts, restaurants, service stations, ramps, toll plazas, roadways, new road lanes, and park and rides. The EO 172 Policy is designed to "... ensure the provision of comprehensive information, as well as the opportunity for maximum public comment, as part of the transportation project development ..." Pursuant to the EO 172 Policy, the Authority is required to provide adequate public notice announcing a public forum for each highway project at least 15 days before the forum, while at the same time ensuring that proposed plans are made available for public review at the Authority's administrative offices.

The public notice issued by the Authority concerning the EO 172 forum is published in at least two newspapers, posted at the Authority's administrative offices, mailed to municipal and county government officials, and posted on the Authority's website. At the public forum, the nature, scope, purpose, and a tentative schedule for the highway project are explained to the public, who is given the opportunity to ask questions and provide input, opinions, and recommendations. Following each public forum, the Authority continues to accept written public comment and input for an additional 15 days.

The EO 172 Policy requires that the Authority consider and respond to all comments, opinions, and recommendations received as part of the record of the proceedings. The EO 172 Policy process (i) provides advance public notice; (ii) offers useful information concerning each highway project; (iii) provides ample opportunity for public comment and input; and (iv) provides for Authority consideration of and response to public comment and input concerning a proposed highway project. All of these are processes in which the Authority can solicit, hear, and consider the comments of the public and stakeholders, and make changes to the project according to public input. Such input is a valued aspect of the process and one that the Authority considers critical to its mission of providing and operating safe and convenient roadways for the public.

II. Compliance with EO 215 (1989)

In its long-running and consistent practice of considering environmental impacts, including factors contributing to climate change, the Authority conducts an extensive review of the environmental impact of projects that fall within the jurisdiction of EO 215 (1989), which was enacted to reduce or eliminate the environmental effects of projects initiated or funded by departments, agencies, or authorities of the State. The EO 215 process addresses two levels of projects: (i) Level 1, which are projects with anticipated construction costs of over \$1 million; and (ii) Level 2, which are those for which construction costs are over \$5 million and land disturbances over five acres. To that end, an Environmental Assessment (EA), prepared in accordance with guidelines drafted by the New Jersey Department of Environmental Protection (NJDEP), is

required for Level 1 projects, and an Environmental Impact Statement (EIS) must be prepared for Level 2 projects.

Executive Order No. 215 requires multiple environmental surveys, formation, and analysis of project alternatives, analysis of the environmental impacts and, in some cases, creation of mitigation concepts, to ensure that the myriad environmental effects and impacts of a project are evaluated, vetted, and appropriately addressed. All of these aspects of the process ensure that the environmental impact of any affected project is both known and minimized or mitigated. Notably, NJDEP's Administrative Order 2020-01 has directed that EO 215 guidelines be updated to incorporate climate considerations, thereby directly incorporating climate change analysis into the environmental impact process utilized by the Authority and other State agencies.

III. Compliance with EO 23 (2018)

EO 23 (2018) directs the NJDEP, in consultation with the Department of Law and Public Safety and any other relevant departments, to develop guidance for all Executive Branch departments and agencies for the consideration of "Environmental Justice"—including, at a minimum, ensuring that residents of all communities receive fair and equitable treatment in decision-making that affects their environment, communities, homes, and health in—implementing their statutory and regulatory responsibilities. Upon publication of final guidance, the Authority will, of course comply, as necessary and appropriate. That is not to say that the Authority does not currently recognize or consider the mandate of EO 23.

Indeed, the Authority regularly and consistently explores ways to minimize environmental impacts on constituents of the State, especially those in economically stressed, low-income and minority communities. Minimization of encroachment and impact is considered during every step of a program or project, and is memorialized in multiple alternative construction and design programs, including noise and exhaust minimization in residential areas intended to avoid adverse health and environmental effects. As explained above, this is all bolstered by the Authority's extensive public comment process.

IV. Compliance with EO 274 (2021)

EO 274 (2021) states that "it is the policy of the State to reduce GHG emissions to 50 percent below 2006 levels by 2030." The Office of Climate Action and the Green Economy (OCAGE) is tasked by EO 274 with coordinating the efforts of Executive Branch departments and agencies to further develop and implement the objectives of New Jersey's Energy Master Plan and the 80x50 Report, which summarizes the emission reduction potential of existing programs and identifies several strategies that, in combination, would enable the State to achieve the 80x50 Goal. *See* New Jersey's Global Warming Response Act 80x50 Report, available at <https://www.nj.gov/dep/climatechange/docs/nj0gwra80x50report0202.pdf>.

In this regard, the Authority has been proactive. As noted above, the Authority has led the way with the installation of EV charging stations, a project executed to allow for easier access to Authority roadways for active EVs in the State. The program, started in 2014, promotes the use of EVs by providing convenient and prominent access to charging stations. These stations were also placed to allow for additional community and governmental use of EVs through expansion as demand increases in the future. As of 2020, the Authority fostered plans for charging stations at various service areas on its roadways, allowing for the installation of 76 charging units, the vast majority of which are on the New Jersey Turnpike. These actions incentivize the acquisition of EVs and allow for the community to utilize easy access to "refueling" when traveling Authority roadways. Continued development of infrastructure and the resulting

encouragement of EV use, as carried out and planned, will lower GHG emissions on both the Garden State Parkway and New Jersey Turnpike.

The Authority also has plans in place to activate a light-duty EV fleet within the next four years. The Authority has four plug-in hybrids currently in service, and is awaiting the imminent delivery of eight more hybrids. Thus, by the end of 2022, at least 12 plug-in hybrids will be in the Authority's light-duty fleet, keeping the Authority on track to meet the goals mandated by the Electric Vehicle Act of 2020, N.J.S.A. 48:25-1 through 11.

Additionally, pursuant to its statutory authority, the Authority provides significant and continued funding to the State of New Jersey—\$746 million to be provided in fiscal year 2023 alone—to support New Jersey Transit's role in carrying out continuing improvements to and expansion of New Jersey's public transportation network, thus easing the use of vehicles on the State's roadways and their concurrent generation of GHGs.

Finally, the Authority employs a rapid-response process to quickly clear accidents, reopen lanes, and improve mobility at the scene of large-scale vehicle incidents, decreasing roadway congestion, and curbing vehicle idling. The Authority works with the New Jersey State Police to efficiently increase response time and decrease the impact to Authority roadways and the patrons that travel them. Employees in the maintenance division regularly patrol the Garden State Parkway and New Jersey Turnpike to quickly remove disabled vehicles and accident debris from traffic lanes, protect the safety of first responders and the traveling public, and prevent secondary crashes. Adaptive traffic signals improve throughput along signalized arterial corridors, reducing traffic queues. The Authority's website outlines these and additional services provided to motorists, including daily traveler information that allows motorists to avoid congested areas that create longer idling time and greater vehicle emissions.

V. Request for Rulemaking

Rulemaking provides Executive Branch departments and agencies with a mechanism to implement legislation or governmental policy and allows an agency to further legislative policy goals so that those who are subject to regulation understand their obligations under the regulation. However, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., rulemaking is neither required nor necessary to implement the provisions of EO 274 and EO 23.

The New Jersey Administrative Procedure Act, in pertinent part, defines a "rule" as an agency's statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure, or practice requirements of any agency. N.J.S.A. 52:14B-2. While "rule" includes the amendment or repeal of any rule, it does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. *Ibid*.

EO 274 and EO 23 are not directed toward members of the regulated public and do not seek to impose any requirements or obligations on the public. Rather these executive orders govern the conduct of Executive Branch departments and agencies. Accordingly, rulemaking with respect to EO 274 and EO 23 is unnecessary, and the Authority declines to adopt rules as requested by the petitioners. For the foregoing reasons, the subject petition is hereby denied.

The Authority hereby certifies that the petition that is the subject of this notice of action on petition, was duly considered pursuant to law.