

NY Climate ADVOCACY PROJECT

Sent Via Email to scopingplan@nyserda.ny.gov

July 1, 2022

Hon. Doreen M. Harris, President and CEO
New York State Energy Research and Development Authority
Hon. Basil Seggos, Commissioner
New York State Department of Environmental Conservation
c/o Draft Scoping Plan Comments
17 Columbia Circle
Albany, NY 12203-6399

Re: Comments on the Draft Scoping Plan

Dear Commissioner Seggos and President and CEO Harris:

The New York Climate Advocacy Project (NYCAP) welcomes the opportunity to submit these comments on the Draft Scoping Plan (Draft Plan) adopted by the Climate Action Council (CAC). We are New Yorkers that believe that global warming is the greatest threat to humanity and our planet, and that human use of fossil fuels has created this crisis. NYCAP strives to identify policy solutions to the climate crisis and to build the movement for a just and sustainable energy future.

NYCAP urges that the Final Scoping Plan (Final Plan) reflect the urgency of the crisis. The Draft Plan summarized many of the conclusions of the IPCC (Intergovernmental Panel on Climate Change) Sixth Assessment Report, including increased global mean surface temperatures, changes in precipitation, and rising sea levels, as well as the well-documented health, economic and other impacts on New Yorkers of our continuing reliance on fossil fuels. New Yorkers have etched in their memories the fears they felt and harms they and their neighbors experienced due to extreme weather events such as Superstorm Sandy (2012), Hurricane Irene (2011), and Hurricane Ida (2021), which resulted in the deaths of 43 people, including several who drowned in their basements. The overwhelming scientific evidence indicates that such events will be more frequent if the most urgent action is not taken by government. The Draft Plan also commendably articulated the importance of dramatic action by New York State, both as a contributor to addressing the climate crisis, and as a model for other states and nations to follow. The leaders of our state, including the CAC, must have the courage to act rapidly and decisively to address the urgency of the crisis, despite the opposition by the oil industry, and the utility companies and their allies with a vested interest in continuation of many of the practices that got us into the crisis in the first place. We are counting on the CAC to resist this opposition on behalf of the health and welfare of the overwhelming majority of New Yorkers.

In light of the crisis and the remedial purposes of the Climate Leadership and Community Protection Act (CLCPA or the Climate Act), the statute must be broadly interpreted and enforced to accomplish the purposes of reducing greenhouse gas (GHG) emissions and achieving the social justice goals of the Climate Act, including providing remedies and funding for disadvantaged communities that have been historically victimized by pollution and disinvestment.

These comments focus on issues that cross industry sectors (e.g., buildings, transportation, agriculture): most significantly, the role of state government in ensuring robust implementation and enforcement in order to achieve the purposes of the Climate Act.

I. Implementation and Enforcement

While voluntary action by private businesses and individuals will undoubtedly be critical to achieving the GHG greenhouse gas, co-pollutant and renewable targets in the CLCPA,¹ the CLCPA also envisions a predominant role for state enforcement. Yet, the Draft Scoping Plan (Draft Plan) too often relies on voluntary action and on projections -- highly speculative in light of the thirty-year timeframe and other uncertain factors -- that the CLCPA targets will be achieved if the suggestions in the Draft Plan for public and private action are followed.

The statutory language of the Climate Act is clear that the Legislature and the Governor intended the GHG targets to be achieved by legal mandates on industry and individuals. Most notably, the CLCPA says that the Department of Environmental Conservation (DEC) “shall, pursuant to rules and regulations promulgated ... establish a statewide greenhouse gas emissions limit”² and that such regulations shall include “legally enforceable emissions limits, performance standards, or other *requirements* to control emissions from greenhouse gas emissions sources...”. Moreover, the Climate Act imposes a mandatory duty on DEC to “ensure” that the “greenhouse gas emissions achieved are real, permanent, quantifiable, verifiable, and *enforceable*.”³

We were heartened to see in the Draft Plan that the CAC intends to “identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the Climate Act requirements” in the Final Plan.⁴

- 1. The Final Scoping Plan must specify the level of reductions in greenhouse gas emissions and co-pollutants that each industry sector must achieve by 2050 and the other target dates set forth in the CLCPA, provide a timeline for achieving such reductions, and specify the state agency or agencies responsible for enforcing the CLCPA targets for each sector. The mandates for each industry sector should be legally enforceable against businesses and individuals.**

We are greatly disappointed that the Draft Scoping Plan does not ensure that the CLCPA targets are met. The Draft Plan: 1) does not clearly specify GHG emissions reduction targets for

¹ See Environmental Conservation Law (“ECL”) § 75-0107; Public Service Law (“PSL”) § 66-p.

² ECL § 75-0107(1).

³ ECL §§ 75-0109(2)(a), 3(b) [emphasis added].

⁴ Draft Scoping Plan, at 29.

certain industry sectors; 2) adopts some targets that are inadequate in light of the overall CLCPA targets (e.g., an 85% reduction in GHG emissions by 2050); and 3) includes too many goals that depend on voluntary action by industry and individuals rather than mandates. We therefore recommend that the following recommendations be included in the Final Scoping Plan:

- Detailed recommendations should be set forth in the Final Plan for regulations and, if necessary, legislation for each sector of the economy that ensure that the CLCPA targets are ultimately achieved, and that specify which agency or agencies should enforce each industry sector target.
- The Final Plan should provide for interim benchmarks, ideally annual benchmarks, specifying the reductions required for each time period by industry sector.
- The regulatory responsibilities of each agency that are relevant to achievement of the GHG emissions limits and other mandates in the Climate Act should be specified. (The CLCPA clearly provides that state agencies other than DEC are mandated to issue regulations necessary to contribute to achieving the GHG emissions reduction targets.)⁵
- The CAC should strongly recommend that the Public Service Commission (PSC or Commission) end the practice of trading compliance with the CLCPA for non-CLCPA issues now resolved in rate proceedings through confidential negotiations. One potential mechanism to address this is excluding policy issues that impact on the CLCPA from confidential negotiations, instead resolving them on their own merits through public regulatory proceedings.
- The Final Plan should include a review the state’s regulatory structure by industry sector to ensure that effective mechanisms are in place to ensure that all New York businesses and residents comply with the clear GHG and co-pollutant reduction targets set forth in regulations and legislation, and that these targets are enforceable against businesses and individuals.
- Specific GHG emissions reductions targets for the state’s investor-owned utilities and other large businesses should be set where appropriate and feasible.

2. The Final Scoping Plan should clarify the obligations of each state agency and entity concerning CLCPA Sections 7(1), 7(2), and 7(3) and outline aggressive policies to decarbonize the operations of state and local government and entities that contract with state government.

While the focus of the Draft Plan is on meeting the GHG targets in Article 75 of the Environmental Conservation Law, the CLCPA also contains several important provisions in regard to the participation by state agencies and other entities like authorities in achieving the goals of the Climate Act. Specifically, Section 7(1) of the CLCPA requires all state agencies to “assess and implement strategies to reduce their greenhouse gas emissions.” Section 7(2), the “climate screen,” requires all state agencies and other entities to consider whether the permitting actions, contracts and other decisions each agency makes will “interfere” with the state’s attainment of its GHG emissions goals, and to identify alternative GHG mitigation measures, if a decision is deemed to interfere with attainment of the emissions targets. Finally, Section 7(3), the “equity screen,” provides that permits, contracts and other decisions cannot “disproportionately burden” disadvantaged communities. To ensure that each of these three provisions of Section 7

⁵ CLCPA § 8(1); ECL § 75-0109(1).

of the CLCPA are effective, we recommend that the following provisions should be included in the Final Scoping Plan or addressed in some other manner:

- To facilitate compliance with CLCPA Sections 7(2) and 7(3), the Final Scoping Plan should recommend that agencies modify their permitting and contracting policies so that they further the GHG reduction and social justice mandates of the law, based on guidance provided by a designated central entity (such as the Governor).
- The Final Plan should recommend that policies be developed to require those who contract with the state to transition off fossil fuels.⁶
- The Final Plan should specify a central entity of the state, presumably the Governor, who would issue guidance to state agencies on the proper meaning and implementation of key CLCPA provisions, including those in Section 7, and the procedures to be followed, based on recommendations that should be set forth in the Final Scoping Plan.⁷ This guidance would address and clarify ambiguous or unresolved legal issues concerning Section 7 (i.e., Sections 7(1), 7(2) and 7(3)) through cross-agency legal interpretations that set a floor as to the minimum obligations of agencies and other entities, as well as the procedures to be followed.
- A central state entity -- either a new entity or an existing entity -- should be tasked with the responsibility of coordinating the decarbonizing of state operations. (This entity could be the CAC itself.)

3. The Final Scoping Plan should establish a process to ensure the achievement of the CLCPA investment mandate.

Under the CLCPA's "investment mandate," at least 35% (with a goal of 40%) of the benefits of energy and related programs must benefit "disadvantaged communities."⁸ The investment mandate is intended to ensure that communities of color and low-income communities will get their fair share of the benefits of our state's transition to a renewable energy economy, as a means of addressing the impacts of the siting of polluting facilities in their neighborhoods and other harms they have historically suffered. We recommend the following provisions to address the investment mandate:

- The Governor or some other state entity, with the strong input of the Climate Justice Working Group (CJWG) and other key stakeholders, should provide formal guidance to state agencies and entities that are subject to the investment mandate as to how to modify their budgeting, contracting, grant-making and other procedures to implement this critical provision. Without such guidance, and strong leadership by this and future governors, the investment mandate provision is unlikely to be implemented in accordance with the statutory intent.
- The guidance should provide that project applicants for CLCPA investment mandate funding should be given the option of proposing projects serving contiguous census tracts

⁶ For example, we support the recommendation in the Draft Scoping Plan to require ZEV equipment use for state contractors and at targeted facilities. Draft Scoping Plan, at 106.

⁷ We believe that the Governor, as the chief executive of the state, is in the best position to issue such guidance, with input from a number of entities, including DEC, NYSERDA and the Department of Law. This guidance should be promulgated only after a robust public comment period and hearings.

⁸ ECL § 75-0109(1).

that are each designated as Disadvantaged Communities (DACs), if in the applicant’s view, projects serving multiple census tracts best meet the needs of their community. State agencies and other entities awarding such funding should be given the discretion to fund projects that span multiple census tracts that are each designated as DACs.

4. The Executive should submit legislation to address the gaps in enforcement and implementation of the CLCPA and to resolve ambiguities as to the meaning of existing statutes.

Through the Draft Scoping Plan, the CAC has identified areas that require legislation to supplement the CLCPA. NYCAP makes the following recommendations concerning implementing legislation and regulations:

- The CAC should include in the Final Scoping Plan a concrete listing (perhaps in an appendix) of not only the regulations, but the legislation necessary to fully implement its recommendations.
- If the CAC deems it does not have the capacity to actually draft all of the legislation necessary to implement the Final Scoping Plan for submission to the Legislature, the Governor should direct the appropriate agencies to draft legislation for industries subject to their jurisdiction.
- The CAC should also consider endorsing existing legislation that is consistent with its recommendations.
- Given the extreme urgency of meeting the GHG targets in the CLCPA, we highly recommend that all new legislation sponsored by the CAC or the administration be submitted at the latest by early in the 2023 legislative session, to correspond with the January 1, 2024 statutory mandate for the issuance of the final DEC GHG emissions reduction regulations.⁹ However, in some instances, for example in the case of the state’s low rise construction code, it will be necessary to develop and submit legislation at an earlier time, given the urgency of action in this sector.¹⁰

5. The monitoring process established under the Final Scoping Plan must closely support the efforts of DEC and other state agencies and entities charged with enforcing the GHG emissions reduction mandates.

NYCAP praises the CAC for acknowledging in Chapter 23 of the Draft Plan that “monitoring and reporting on the results of our efforts and a robust public process” is critical to successful achievement of the GHG and co-pollutant reductions mandated by the Climate Act.¹¹ However, in addition to the information subject to reporting mentioned in the Draft Plan, we make these recommendations for the Final Plan:

- The CAC should recommend the collection and public reporting of data in a more granular manner to provide additional assurance that the GHG emissions and co-pollutant

⁹ See ECL § 75-0109(1).

¹⁰ See Draft Scoping Plan, at 125.

¹¹ *Id.*, at 327.

goals are achieved. For example, we recommend that the annual inventory of GHG emissions required by the Climate Act should be broken down by industry sector.

- The CAC should recommend that a database be created, which is posted on the web as to which businesses have been adjudicated in violation of the GHG emissions and co-pollutant targets in the CAC, and the actions taken by enforcement agencies (e.g., the fines imposed and other remedies ordered).

II. Cross Sectoral Issues

1. The Final Scoping Plan should avoid “false solutions” to the climate crisis.

In light of the demonstrated urgency of the climate crisis, some of the technological solutions proposed throughout the Draft Plan are in our view extremely problematic. Several of these “false solutions” were documented in a 2021 NY Renew report,¹² and the CJWG has repeatedly raised concerns about certain technologies proposed in the Draft Plan.¹³ False solutions to the climate crisis continue to be used by fossil fuel companies, utility companies and other impacted industries to support their current business models. Given the environmental (e.g., air quality), equity, and cost concerns presented by these technologies, the CAC should reject these false solutions, unless future solid scientific evidence supports these technologies, and no reasonable alternatives are available.

2. We prefer Scenario 3 of the scenarios set forth in the Draft Scoping Plan.

The Draft Plan sets out three scenarios to achieve the GHG emissions reductions.¹⁴ NYCAP recommends Scenario 3 because, unlike Scenarios 2 and 4, Scenario 3 achieves the GHG emissions limits with a limited role for technologies like low carbon fuels, bioenergy and hydrogen combustion, industry-driven solutions that are untested, have serious health implications, entail serious equity concerns, and/or are unnecessary to achieve the CLCPA emissions limits. Instead, New York should emphasize electrification of buildings and transportation and energy efficiency, central features of Scenario 3.¹⁵

3. The state should establish by legislation a mechanism to provide significant state funding to support reductions in greenhouse gas emissions and co-pollutants and to vastly accelerate the state’s transition to a renewable energy economy.

Fully addressing the climate crisis and environmental injustice in New York will cost tens of billions in private and public investments. While the cost of renewables like wind and solar is already less in many cases than fossil fuel projects, it remains true that the massive transitions we must make to a clean energy economy cannot happen without significant

¹² NY Renew, “False solutions, gas and trash: how the fossil fuel industry is holding back a just transition” (March 2021), <https://static1.squarespace.com/static/58ae35fddb29d6acd5d7f35c/t/60351d79b4a58450d1f9dd8b/1614093694407/False+Solutions+Report+-+FINAL.pdf>.

¹³ See Draft Scoping Plan, Appendix B: “CJWG Feedback on Advisory Panel Recommendations.”

¹⁴ Draft Scoping Plan, at 70-71. Scenario 1 -- adopting all of the recommendations of the various advisory panels -- is apparently not under consideration, as the recommendations together didn’t meet the CLCPA emissions targets. *Id.*, at 70.

¹⁵ See Figure 6, Draft Scoping Plan, at 71.

investments by government to spur and complement private investments. Government funding has been central to many major previous transformations of the U.S. economy, including the Internet, broadband, and the interstate highway system. Addressing the climate crisis will be no different. And some necessary components of the transition to a renewable energy economy, like expansion of public transportation, simply cannot happen without significant government dollars. NYCAP therefore makes the following commendations for the Final Scoping Plan:

- The Final Plan should recommend passage of the Climate and Community Investment Act (CCIA; A6967, Cahill/S4264, Parker). The CCIA would institute a fee on carbon and other greenhouse gas pollutants, requiring companies supplying fossil fuels to pay for their contributions to the climate crisis, thus generating revenue to invest back into disadvantaged communities. The revenue generated would be used for: 1) large-scale, multi-region projects that reduce emissions and target areas of need, including major solar arrays, grid stability, electric vehicle charging infrastructure, and public transit; 2) smaller scale projects that benefit disadvantaged communities and the climate, like energy efficiency initiatives; 3) providing benefits to workers impacted by plant closures and their communities like job retraining and replacement of lost taxes in the case of communities; and 4) providing a rebate to most New Yorkers for anticipated increased energy costs in the short and medium term.
- The CAC should consider supporting legislation (S9417) to create a “Climate Change Adaption Cost Recovery Program” with the purpose of requiring large energy companies that have “contributed significantly to the buildup of climate change-driving greenhouse gases to the atmosphere to bear a proportionate share of the cost of infrastructure investments required to adapt to the impact of climate change in New York State.”¹⁶ S9417 is not duplicative of the CCIA, as it focuses on providing funds for the retrospective damage to infrastructure and on mitigating future harms to infrastructure (e.g., sea walls, storm water system upgrades),¹⁷ while the CCIA is focused on transitioning to a renewable energy economy and reducing greenhouse gas emissions in the future.
- NYCAP believes that the proposals in the Draft Plan for measures like variable pricing and parking policies, and mileage-based user fees should strongly be considered,¹⁸ with appropriate provisions to mitigate the impact of such fees on low income people.

4. We support a comprehensive marketing, outreach and information and referral campaign that covers multiple industry sectors, as well as prohibitions on utility marketing of fossil fuels.

NYCAP strongly agrees with the recommendations throughout the Draft Plan for outreach, marketing and/or information campaigns to promote the transition to a renewable energy economy in our state. We also agree that the outreach and marketing efforts should prioritize disadvantaged and other traditionally excluded communities.¹⁹ However, some of the proposals are not comprehensive, in that, for example, they only apply to one sector of the economy, like buildings. Here are our recommendations:

¹⁶ S9417 (Krueger), Legislative Finding 4.

¹⁷ See S9417, Proposed ECL § 76-0101(2).

¹⁸ See Draft Scoping Plan, at 117.

¹⁹ See *Id.*, at 141-2 (focuses on improving consumer awareness of steps to decarbonize buildings).

- The Final Plan should propose a well-funded coordinated campaign to direct consumers and businesses to information on climate change, and to resources that would enable them to transition away from fossil fuels, with information like how to purchase renewable products like solar and electric vehicles (EVs), how to weatherize one’s home, and how to access programs that subsidize the purchase of renewable products like EVs. This coordinated outreach and information campaign should encompass multiple sectors of the state economy, including but not limited to building electrification, clean transportation (e.g., electric vehicles), smart growth, food, and agriculture.
- The campaign should include the ability for consumers and businesses to obtain information and referrals through a single Internet portal and phone information line maintained by New York State, a trusted resource.
- Trusted community organizations should be funded to provide information and do outreach on a regional basis for this coordinated statewide campaign.
- We support prohibitions on regulated utilities continuing to market oil, gas and other fossil fuel products.

5. The Scoping Plan should include strong labor standards and a just transition for workers.

As New York State transitions to a renewable energy economy, it is critical that fossil-fuel dependent workers and communities do not get left behind. The Climate and Community Protection Act (CCPA), the forerunner of the CLCPA, initially included worker provisions like prevailing wage, apprenticeship, and minority and women business enterprises utilization standards for green energy jobs receiving state support. Although labor language was ultimately not included in the CLCPA (other than a brief provision reciting that the CLCPA is “subject to prevailing wage law”),²⁰ it is critical that the Final Scoping Plan strengthen the rights of workers across New York State and fully consider the needs of workers and their communities in restructuring our state’s energy systems.

III. Conclusion

In closing, we would like to once again thank the CAC on behalf of the New York Climate Advocacy Project for the opportunity to offer our comments on the Draft Scoping Plan. Please do not hesitate to contact Ruth Foster at rmfosterny@gmail.com or at (518) 588-0187 concerning these comments.

Very truly yours,



Ruth Foster, Director
On behalf of the New York Climate Advocacy Project

²⁰ CLCPA § 5.