



119 Washington Avenue, Suite 103  
Albany, NY 12210  
518.432.1405  
info@aceny.org | www.aceny.org

New York State Senate 2023 Hearing  
to examine the legislative and budgetary actions necessary  
to implement the Climate Action Council Final Scoping Plan  
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TESTIMONY of  
Anne Reynolds, Executive Director, Alliance for Clean Energy New York  
[areynolds@aceny.org; 518-248-5886]

Thank you for the opportunity to provide testimony on the legislative and budgetary actions necessary to implement the Climate Action Council Final Scoping Plan on behalf of the Alliance for Clean Energy New York.

The Alliance for Clean Energy New York (ACE NY) is a broad coalition dedicated to promoting clean energy, energy efficiency, a healthy environment, and a strong economy for the Empire State, and is New York's premier advocate for the rapid adoption of renewable energy, energy efficiency technologies and transportation electrification. Our members include renewable energy, energy efficiency and electrified transportation companies -- many of the companies that employ New Yorkers in the clean energy economy. According to the 2022 Clean Energy Industry Report published by NYSERDA, in 2021 there were 165,000 clean energy jobs. Our goal is to protect and grow these jobs for New Yorkers as we also grow the supply of clean, pollution-free power. You can learn more about ACE NY at [www.aceny.org](http://www.aceny.org).

Now that the Climate Scoping Plan is done, NY's climate goals must become construction goals. It is construction of wind and solar projects, energy storage and transmission projects, all-electric buildings, and electric vehicle charging infrastructure that will allow New York to progress towards our goals. Without this construction, the best plans and policies do not deliver.

Therefore, this testimony focuses on the actions the Legislature can take to turn our renewable energy goals in the Climate Plan into construction goals. This includes the actions the Legislature can take to overcome the current challenges the renewable energy development industry is facing, as well as actions the Legislature can take to ease the decision-making process for New Yorkers looking to invest in our low-carbon future. Finally, ACE NY is strongly supportive of the Climate Action Plan's Cap and Invest proposal and this testimony will focus on that issue as well.

This testimony is organized in the following sections:

- I. **The Foundation of the Climate Plan: Building Renewable Energy Projects**
- II. **Actions to Help New Yorkers Choose Low Carbon Options**
- III. **Support for A Cap and Invest Program**

## I. The Foundation of the Plan: Building Renewable Energy Projects

The New York State Legislature gave a significant boost to renewable energy policy through its passage of the Climate Leadership and Community Protection Act (CLCPA), which requires, among other ambitious goals, 70% renewable electricity by 2030 in New York. That is, 70% of the electricity that we all use in 2030 is meant to be generated using renewable technologies. This will be a dramatic increase from the current percentage of 27% in 2021. Prior to the CLCPA, past Governors also created renewable energy goals – first 25% by 2020 and 30% by 2020, and then later 50% by 2030 and 70% by 2030. But our percentage of renewables used in New York has only increased from 19.3% in 2005<sup>1</sup> to 27% in 2021. Over that timeframe, more than 1,200 wind turbines have been installed in NYS; the solar market has grown from zero; we have 1,000 MW of community solar (the most of any state), and about 4,300 MW<sup>2</sup> of rooftop and community solar operating. But in terms of the percentage of total power used, we still have far to go.

New York has a central procurement approach to renewable energy procurement – different than any other state in that that the State itself is the buyer of Renewable Energy Credits, or RECs. And the renewable energy industry is essentially in a public-private partnership with the state of New York by competing for long-term contracts to provide the RECs to New York; contracts that get wind and solar energy projects built. In 2016, the name changed from Renewable Portfolio Standard to Clean Energy Standard (CES), but the MAJOR change was a shift from a ‘budget limited’ program (that is, a certain amount of funds would be committed each year) to a procurement amount program, whereby NYSERDA would issue a solicitation and aim to procure a certain amount, that amount being set by the pathway to achieve 70% renewables by 2030. Which means there was a major and significant acceleration in contract awards.

Under the new Clean Energy Standard, the private sector has proven its very real interest and ability to invest in New York and develop wind and solar projects in New York: the competition in all NYSERDA solicitations has been robust and the REC prices have remained affordable. Since 2017, NYSERDA has awarded 137 contracts<sup>3</sup> totaling 13,623 megawatts of generating capacity. That is a rapid acceleration that has queued up a diverse array of projects. At this point though, of those, 18 are operational, 14 have attrited, and approximately 11 are under construction.

There have been serious delays in getting projects from contract to construction. Several of the factors causing delays have been addressed (like this Legislature replacing the Article 10 permitting process with the 94-C permitting process in 2020), at least in part, but others remain. With

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<sup>1</sup> <https://www.nyserdera.ny.gov/-/media/Project/Nyserda/files/Publications/Energy-Analysis/RPS/NYS-RPS-performance-report-2005.pdf>

<sup>2</sup> <https://www.nyserdera.ny.gov/All-Programs/NY-Sun/Solar-Data-Maps/Statewide-Projects> (as of November 30, 2022)

<sup>3</sup> An additional 14 projects were awarded contracts but are identified as cancelled. These 14 projects represent a 10% attrition rate. The 4,500 GWh/year average annual procurement estimate assumes an attrition rate of 20%. As the June 2020 White Paper on Clean Energy Standard Procurements to Implement New York’s Climate Leadership and Community Protection Act explains, “While some project failure is inevitable, it will not be possible for the Tier 1 procurements to play their necessary role in getting to 70 by 30 without comparatively low and predictable rates of attrition, along with timely project development and construction.”

permitting, the process is still long, complex, and expensive in NY, but ACE NY is optimistic that the permitting reforms will gradually bear fruit.

We estimate that 37 projects have permits (but haven't started construction). Then there are an additional 46 contracted projects for which we don't know the specific status, but they are in the permitting process. 4 of the NYSERDA contracted projects are for offshore wind, which will be permitted by the federal government. Under the CES, NYSERDA needs to have procured an additional 4,500 million megawatt-hours of new generation in 2022, and to also do so in 2023, 2024, 2025, and 2026 (NYSERDA did not procure the required amount in 2022). Plus, the remainder (about half) of the 9,000 MW of offshore wind needs to be contracted. If all that happens, we will have enough projects under contract to meet the 70% by 2030 goal. In fact, in its latest announcement of contract awards, NYSERDA reported that IF ALL of the currently contracted projects were built and became operational, New York would meet 66% of its 2030 power demand with renewable energy. That represents real and significant progress, but it still requires that the projects actually get built.

New York has set ambitious goals and fast-approaching timelines for the development of renewable energy in the state. Of course, there are barriers that need to be addressed in order to make sure that New York reaches those goals. Permitting and siting roadblocks, unwieldy tax negotiations, and lack of transmission headroom capacity are simply a few of the barriers faced by wind and solar developers. Supply chain constraints have also affected projects moving to construction. New York must work to remove these obstacles to ensure the timely development of clean energy projects.

Below we list some measures the Legislature could take in 2023 to address some of these issues:

- Codify State Operations Going 100% Renewable

ACE NY enthusiastically supports the recent Executive Order [Leading By Example](#), which commits all state operations to use 100% renewable electricity by 2030. This should be codified by the Legislature, particularly for the Long Island Power Authority (LIPA) and New York Power Authority (NYPA).

- Improve Tax Policies to Facilitate Renewable Energy Development

Exempt Renewable Energy PILOT Revenue from Tax Cap Calculations: By exempting Payment In Lieu of Taxes (PILOT) property assessment increases, and not exempting PILOT revenue from Tax Cap calculations, the current law limits revenues that a municipality or school district can realize without a public referendum. In other words, even though a wind or solar project will be paying significant property taxes via a PILOT payment in a town, the tax cap will often require a town to reduce residential and commercial property taxes rather than realize additional revenue and limiting their ability to fund expanded local programs.

Require Tax Assessment Models to go through SAPA: The statutory language requiring the establishment of a standardized tax model ([Real Property Tax Law, Section 575-B](#)) should be amended to clearly state that promulgation of the model and periodic updates to the model be subject to the State Administrative Procedures Act (SAPA).

Create a Tax Rebate Program for Existing Renewables: Older renewable energy facilities must be kept in operation, and their power and Renewable Energy Credits (RECs) kept in New York. Meanwhile, property taxes are a significant expense for renewable energy generation facilities, especially those built before 2015 which do not have contracts with NYSEERDA. We propose a Renewable Energy Retention Program, in which eligible facilities in New York would receive State-supported property tax abatement benefits if they provide renewable power to New York (i.e., do not export power or RECs out-of-state).

- Standardize Renewables End-of-Life Management

Establish State Decommissioning Fund for Renewable Energy Projects: Currently, decommissioning financial requirements are handled at the local level, even those that are required by state regulations through the Office of Renewable Energy Siting (ORES). To standardize and streamline this process, while maintaining the same stringent financial requirements for decommissioning, the Legislature should establish a State Decommissioning Fund for Renewable Energy Projects under Section 94-c of the Executive Law.

Facilitate Solar Panel Recycling Without Slowing Solar Project Development: In June 2021, Niagara County passed a [law](#) that blocks solar development until a development plan that includes end-of-life recycling has been approved by the municipality. This makes manufacturers of solar panels responsible for financing and planning for the recycling of solar panels after their use. Niagara County's law has intentionally stalled solar development<sup>4</sup> in the name of solving a problem that 1) doesn't exist yet and 2) is either redundant or conflicting with State's decommissioning requirements. New York state should preempt local panel recycling laws or, at a minimum, prohibit local waste treatment requirements from blocking solar development.

- Transmission Expansion to Facilitate Renewables Delivery

Direct NYPA to Assist in Solving Transmission Constraints: Currently, one of the largest barriers to the decarbonization of the New York grid is insufficient transmission capacity in certain locations, which is restricting the interconnection of renewable energy projects or is resulting in congestion or curtailment of renewable power. NYPA should continue to contribute to solving this problem with a renewed focus by proposing, within 6 months, "priority projects" (as defined under the Accelerating Renewable Energy Development and Community Benefit Act) to solve issues in the top three congested zones as identified by the New York Independent System Operator (NYISO).

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<sup>4</sup> Prohaska, T, *Niagara County Hopes New Recycling Law Will Discourage Solar Developers*, The Buffalo News, March 2022; [https://buffalonews.com/news/local/niagara-county-hopes-new-recycling-law-will-discourage-solar-developers/article\\_0f6fd0a6-d047-11eb-818d-5f01f54bc7c3.html](https://buffalonews.com/news/local/niagara-county-hopes-new-recycling-law-will-discourage-solar-developers/article_0f6fd0a6-d047-11eb-818d-5f01f54bc7c3.html)

- Eliminate Permitting Inefficiencies

Use An Existing DEC Fund for the Endangered and Threatened Species Mitigation Bank Fund: In the Accelerating Renewable Energy Development and Community Benefit Act, the Department of Environmental Conservation (DEC) was directed to create a new fund (Endangered and Threatened Species Mitigation Bank Fund<sup>5</sup>) that could accept mitigation payments from renewable energy developers in lieu of the time-consuming and disconnected process for the developer and DEC to negotiate a mitigation project. As far as we know, DEC has yet to establish this Fund. An alternative approach would be to use one of many existing funds at DEC.

Revise Public Service Law Sections 68, 69, & 70, to Exclude “Alternative Energy Production Facilities” from Regulation under these Sections: Currently, sections 68, 69, and 70 of the Public Service Law include requirements regarding energy facilities that are unnecessary for renewable energy, duplicative of other permitting processes, and slow down renewables development without providing any additional public policy benefit. “Alternative energy production facilities” should be excluded from regulation under those sections. This would have the benefit of not requiring a separate certificate from the Public Service Commission (PSC) for each project on top of the permit from either the Office of Renewable Energy Siting under 94-C or from the State Siting Board under Article 10.

- Ensure Safe and Efficient Delivery of Wind Turbine Superloads

At present, state troopers are the only entities allowed to escort large wind turbine parts that are “superloads” and there is concern that there are not enough state troopers to escort materials at the scale predicted for coming years. This issue is addressed in [S.373 \(Parker\)](#) / [A.751 \(Hunter\)](#), which would permit other entities to act as escort vehicles for superloads, expand the permissible hauling days, and streamline state agency processes.

## II. Actions to Help New Yorkers Choose Low Carbon Options

The implementation of Climate Action Plan relies on New Yorkers continuing to make investments in their homes and vehicles using climate-friendly purchases, and an acceleration of these purchases. Early on in our clean energy transition, it is important for the State to provide incentives and remove barriers for our residents and businesses to choose low-carbon options.

- Sales Tax Exemption for Energy Storage.

Currently, energy storage technologies are not eligible for exemption from state sales tax for residential and commercial installation. However other similar clean energy technologies, such as residential and commercial solar energy equipment and commercial fuel cells, are eligible. The

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<sup>5</sup> Section 11-0535-c of the Environmental Conservation Law and Section 99-hh of the State Finance Law

State Department of Taxation and Finance issued an advisory opinion<sup>6</sup> stating that in order to be eligible for state sales and use tax exemptions like solar and fuel cell equipment and installation, energy storage must meet specific, narrowly defined technical requirements that effectively make it difficult to impossible to qualify for the exemption. We support [S.3277-A of 2022 \(Parker\)](#) / [A.7316 of 2022 \(Cusick\)](#) which would ensure that clean energy technologies are treated similarly under State tax law, thus creating a level playing field for these technologies. Importantly, this bill ensures that “stand-alone” energy storage projects would be eligible for a state sales tax exemption and thereby help to spur deployment of energy storage projects and enable the state’s electric grid to reap the many benefits of this critical technology.

- Sales Tax Exemption for Heat Pumps.

Heat pumps are the key to our transition to efficient electric heating for our buildings. They offer homeowners and landlords an efficient all-in-one heating and cooling system. Air source heat pumps are two to three times more efficient than fossil fuel or electric resistance heating systems.<sup>7</sup> The [Climate Action Scoping Plan](#)<sup>8</sup> calls for the scaled-up installation of heat pumps and also a scale up of financial incentives for heat pumps. To reach the Governor’s goal of two million climate friendly homes by 2030 and the emission reductions required by the Climate Law, the state should eliminate the sales tax for the purchase and installation of residential and commercial heat pumps, and allow for local municipalities to suspend their share of the sales tax also. The state currently provides a sales tax exemption on the installation of residential and commercial solar energy systems and fuel cells.

- Allow the Direct Sale of Electric Vehicles

The Legislature should allow manufacturers of only electric vehicles to sell their electric vehicles (EVs) at retail locations across the state. Presently, there are only five retailer locations that hold certificates of registration to sell EVs in New York, all of which are located downstate. We support [S.1763 of 2022 \(Kaminsky\)](#) / [A.4614 of 2022 \(Fahy\)](#), which would eliminate the cap on the number of retail locations that manufacturers that do not have franchised dealerships can open. This change would have no cost to the General Fund and would scale up the number of EV retailers in the state. Moreover, it would make it more convenient for all New Yorkers to buy EVs, promoting consumer choice and giving fairer access.

- Exempt Electric Vehicles from Sales Tax

[S.4476 of 2022 \(Jackson\)](#) / [A.4761-B of 2022 \(Fahy\)](#) provides a State sales and compensating use taxes exemption on the first \$35,000 of battery, electric, or plugin hybrid EVs purchase, and authorizes local governments to elect to do the same. This legislation will help to reduce the

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<sup>6</sup> [https://www.tax.ny.gov/pdf/advisory\\_opinions/sales/a09\\_36s.pdf](https://www.tax.ny.gov/pdf/advisory_opinions/sales/a09_36s.pdf)

<sup>7</sup> Air Source Heat Pumps, DOE <https://www.energy.gov/energysaver/air-source-heat-pumps>

<sup>8</sup> Page 183, Scoping Plan [Scoping Plan - New York's Climate Leadership and Community Protection Act \(CLCPA\) \(ny.gov\)](#)

upfront cost of purchasing or leasing an EV, a critical barrier to EV adoption. This bill will support EV deployment and market development in New York. We would also support a phase-out plan for this exemption. For example, the sales tax exemption could be valid between now and 2035 for light duty vehicles.

- Building Benchmarking

New York law should require buildings over 25,000 square feet to record and report their energy use. Benchmarking of energy use has been shown to drive energy and water conservation measures by building owners once they realize the annual cost of energy, and the savings that can result from efficiency measures. The [Final Climate Action Scoping Plan<sup>9</sup> includes the use of benchmarking to provide building owners with information to operate their buildings more efficiently.](#)

- Create an All-Electric Building Standard

ACE NY supports [S.562-A \(Kavanagh\)](#) / [A.920-A \(Gallagher\)](#) that would prohibit infrastructure, building systems, or equipment used for the combustion of fossil fuels in new construction statewide. This would take effect on December 31, 2023 for buildings less than seven stories and July 1, 2027 for buildings seven stories or more. New homeowners should not be saddled with a building that will need to have its heating and appliances switched off of fossil fuels in the next decade.

### III. Support for A Cap and Invest Program

The CLCPA includes an economy-wide cap in emissions (declining to 15% of 1990 emission levels in 2050) and the time has come for the DEC to implement that cap via a regulatory process. In 2023, DEC is required, by the CLCPA, to develop and issue the regulations to enforce that cap. It should be a set cap (in million metric tons (MMT) of carbon equivalent) in 2025 that then decreases linearly to meet the 2030 and then the 2050 mandates. Any applicable emitter must hold an allowance for each ton of carbon dioxide (CO<sub>2</sub>) they emit or cause to be emitted.

At the same time, the Plan includes numerous policies and activities that are currently unfunded. If the polluters that need allowances under the cap are required to purchase those allowances (rather than get them for free) they will have a built-in incentive to reduce their emissions, and the State can generate revenue to fund the various measures in the Plan that currently do not have a funding source, including, for example, activities to invest in workforce development and a just transition, to subsidize energy efficiency retrofits and electrification in low- and moderate-income housing, and to re-invest in Disadvantaged Communities.

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<sup>9</sup> Page 183, NY Climate Scoping Plan <https://climate.ny.gov/resources/scoping-plan/>

This approach of capping emissions and investing proceeds, referred to as a Cap and Invest Program, was supported by the Climate Action Council in the Plan, and was supported by Governor Hochul in her State of the State address. As she proposed it, there would be a Climate Action Rebate component that would require Legislative approval. Therefore, I urge you to examine this proposal, adjust it as you see fit, and provide your approval, so that a price signal can be put in place and a framework for fairly reinvesting the proceeds can be approved by the Legislature.

The Cap and Invest Program should be designed to assist with affordability (hence the need for the Climate Action Rebate); to reinvest in Disadvantaged Communities; and to avoid the creation or perpetuation of any pollutant hotspots. Ideally, it would be able to merge or combine with other states, and it should protect jobs and economic development in New York, especially if the alternative means that activities that generate emissions simply move across state lines.

In short, legislative action to support the establishment of an economy-wide carbon price signal and declining cap, as well as a framework for re-investing revenues from a cap-and-invest program, should be the keystone of the New York Legislature's actions on climate this session.

## IV. Conclusion

Now that the Climate Scoping Plan is final, ACE NY is hoping that the Legislature will step in and propose and pass legislation to implement those portions of the plan that require statutory change. In this testimony, we have listed a number of specific actions the Legislature can take this year to remove some of the challenges facing renewables development and facilitate their construction; suggested a number of actions to make it easier for New Yorkers to participate in the carbon free transition, and shared our support of the Cap and Invest Program. We sincerely appreciate the Legislature's interest in this important topic and, more generally, in tackling climate change.

We at ACE NY and our member companies and organizations stand ready to help you enact needed legislation to implement the Climate Scoping Plan and meet the ambitious goals in the Climate Leadership and Community Protection Act.