NYS Senate Public Hearing
Legislative and Budgetary Actions to Implement
Climate Action Council's Final Scoping Plan

Written Testimony

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Thank you, Chairs Krueger, Parker, and Harckham for the opportunity to testify before you today. I also appreciate the opportunity to speak with all of the members of the Senate Finance, Energy, and Environment Committees. I am Gavin Donohue and President & CEO of the Independent Power Producers of New York (IPPNY). Three years ago, I was the first appointed member of the Climate Action Council.

Having been established in 1986, IPPNY is New York's premiere trade association dedicated to representing the independent generators of electric power in New York State, as well as a natural gas transmission company and other suppliers of services to the energy industry. Our companies produce more than 75% of the State's power from all sources, such as: wind, solar, hydro, energy storage, natural gas, oil, waste-to-energy, biomass, and nuclear. In combination, these resources maintain electric system reliability. IPPNY Members have invested over $10 billion in their facilities, employ over 10,000 people across the State, and pay about $1.7 billion in property taxes annually. IPPNY does not represent utilities or power authorities. Our Members bear the risk of their decisions, and they cannot charge ratepayers for recovery of all of their costs, like utilities used to do when they were in charge of power generation prior to 1999. Additionally, since 2000, through the implementation of competitive electricity markets and regulatory requirements, power producers in New York State have successfully reduced emissions of sulfur dioxide by 99%, nitrogen oxides by 92%, and carbon dioxide by 55%, while having an incredibly reliable grid.

The Climate Leadership and Community Protection Act ("CLCPA") requires an economy-wide approach to addressing climate change, coupled with mandates to deliver 70% of New York's energy from renewable resources by 2030 ("70 by 30 target") and 100% emissions-free electricity supply by 2040 ("100 by 40 target"). The Climate Action Council's Adopted Scoping Plan ("Scoping Plan or Plan") was intended to inform New York residents and businesses regarding measures necessary to meet the requirements of the CLCPA. While the Council is required to update the Plan at least once every five years, it was essential that the inaugural Plan be practical and comprehensive, and that it contains provisions to send investment signals necessary to achieve the CLCPA's requirements in a reliable and cost-effective manner.

To help ensure that New York's clean energy transition is done in a more responsible manner, IPPNY, along with the New York State AFL-CIO, the New York State Building & Construction Trades Council, and Business Council of New York State, formed a unique coalition to develop a set of seven principles[1] to advance New York's clean energy goals and establish the criteria to be met by the Plan. These principles address key issues of reliability, affordability, worker training and safety, emissions reductions, and fuel and technology diversity. They are useful now to guide the Plan's implementation.

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[1] Advancing New York State's Clean Energy Goals

The purpose of this hearing is to examine the legislative and budgetary actions necessary to implement the Plan. My recommendations for implementation are in the areas of maintaining electric system reliability; ensuring energy consumer affordability; preserving existing renewable energy facilities; responsibly developing the Economywide Cap & Invest program; and increasing agency staffing to take the steps needed to effectively implement the Plan. My testimony also cautions against legislative action that would increase consumer costs, jeopardize the benefits they are receiving from competitive wholesale electricity markets, and harm the reliability of power supplies upon which they depend.

1. Recommendations for Implementation

A. NYISO's Warnings on Future Reliability Concerns, especially for New York City, and Calls for Dispatchable Emissions-Free Resources

The New York Independent System Operator ("NYISO") is required to operate the wholesale electricity market in New York to the strictest reliability standards in the nation. The most recent 2021-2040 System and Resource Outlook ("Outlook") study, released by the NYISO just a few months ago, makes it clear that, to meet the targets of the CLCPA, more than 111 gigawatts ("GW") of total installed generation capacity will be needed by 2040, 95 GW of which must be new generation.[2] To put these numbers into perspective, 1 GW is enough to power roughly 750,000 homes. Further, the total amount of generation on the State's system today is roughly 41 GW[3] and only 12.9 GW of generation has been added since 1999.[4] This is an incredible amount of new generation needed to reach our climate benchmarks.

The invention and installation of a new class of non-energy storage-based technology that is both dispatchable and emissions-free – also known as dispatchable emissions-free resources ("DEFRs") - will be necessary to meet our climate goals. According to the Outlook, 27-45 GW of DEFRs will be required by 2040. Any delay or failed materialization of critical assets will breach the State's federally required reliability margins and jeopardize achievement of the State's clean energy goals. The main problem is that these DEFRs have not been identified yet by the NYS Public Service Commission ("PSC"). The PSC needs to establish a program to reach the 100 by 40 target, given that the CLCPA required it to do so by June 30, 2021. The CLCPA also requires the PSC to review, by July 1, 2024, progress in meeting both the 70 by 30 and 100 by 40 targets.

Despite my repeated requests, the Plan does not mention IPPNY's August 18, 2021, petition[5] with the New York State Building & Construction Trades Council and New York State AFL-CIO as a viable solution to establish DEFRs. The petition urges the PSC to create a market-based program to identify and develop DEFRs to maintain reliability in support of the 100 by 40 target. The PSC took public comment on the petition but has not otherwise acted on it. IPPNY and other parties in the Clean Energy Standard ("CES") proceeding have urged the PSC to conduct a technical conference. The purpose would be to reconcile the public input on the petition, decide which DEFRs are eligible, and to establish a program for how to secure their investment in this state, so that they are operational in time to meet the 100 by 40 target while maintaining system reliability. The full Senate should urge the PSC to act on this petition, as Senators Parker and O'Mara already have done.

This petition was based upon the Senate's unanimous passage of Senator Parker's bill, **S.6497-A of 2021**. Both call upon the PSC to establish a competitive program to foster the development of, and

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[2] NYISO 2021-2040 System and Resource Outlook, "2021-2040 Outlook Report"

[3] NYISO 2022 Load & Capacity Data Report, "2022 Gold Book" at pg. 4.

[4] 2021-2040 Outlook Report at pg. 7.

[5] PSC CES Case 15-E-0302

investment in, 1 GW of zero emissions energy systems to help reach the CLCPA's 100 by 40 target. This program must also maintain electric system reliability and create market signals for these technologies and associated fuels. Importantly, the petition does not specify what zero emissions energy systems should be and asks the PSC to determine what technologies should be eligible. The petition also requests that the PSC include within the program provisions of benefit to labor unions: the prevailing wage; project labor agreements; Buy American provisions that were enacted for renewable energy systems; and an apprenticeship training program.

The State should also do more to assess the impact of the Plan on different regions of the State. With six feet of snow in Buffalo, the State must conduct energy security scenario planning about what it would do if this storm occurred when the entire economy is electrified and not able to rely on natural gas for heat. The New York State Division of Homeland Security and Emergency Services was not a member of the Council. This Division should work with the PSC to develop a report, similar to an After Action Report, which documents the State's actions to respond to winter storms and extreme weather. This effort could provide key observations and lessons learned that would be essential to updating the Division's Comprehensive Emergency Management Plan to address storm response as electrification of the economy occurs.

B. Lack of Ratepayer Cost Analysis and Need to Minimize Upfront Consumer Costs

Although the New York State Energy Research and Development Authority's ("NYSERDA") Integration Analysis looked at the "total potential costs and potential economic and non-economic benefits of the Plan," as required by the CLCPA, this macroeconomic examination of societal costs and benefits does not yield practical information for consumers. This analysis is not enough for energy consumers to fully understand the impact the Plan will have on their energy bills and the economy. The CLCPA also requires analysis of the cost of implementing the Plan's proposed emissions reduction measures, and the quantification of these costs is less clear.

The Plan lacks an independent, transparent, unbiased, comprehensive ratepayer cost impact analysis and quantification of the expense that will ultimately be borne by New York's residents and businesses through increased fees, taxes, and energy bills. For the past two years, I have asked for this cost analysis. I teamed up with 64 statewide organizations requesting an analysis,[6] and we were told that one would happen when specific programs were implemented. The key questions are: how long will consumers need to remain in the dark about their looming costs under this Plan, and ***how can they plan*** to pay for them? Our border state New Jersey conducted a ratepayer impact study; after two years, why won't New York?

Given the lack of understanding about what impact the practical costs of implementing the Plan will have on energy consumers' bills, it is unclear if energy consumers will be provided with sufficient tools to be able to afford the $295 billion that was indicated by the macroeconomic analysis. Furthermore, it remains to be seen when and how energy consumers will realize the $495 billion in benefits that the Plan is expected to provide.

We need a more concrete understanding of how the $70 billion New York hopes to receive from the Inflation Reduction Act and the $4.2 billion from the Environmental Bond Act will affect generation investment and consumer affordability. We also need to understand what the timetable and application processes will be for consumers to obtain these resources.

[6] Letter in support of Multiple Intervenors' Request for a Quantitative Analysis of the Costs of CLCPA Compliance

When the CLCPA was in the process of being enacted, Senator Parker introduced legislation to determine its technical and economic feasibility. That bill was in print **last year, as S.3036**, and it directed the State Energy Planning Board to conduct a study of the technical and economic feasibility of a 100% renewable energy system (the CLCPA now instead requires the 100 by 40 target). The bill would also require an assessment of costs and economic impacts, especially an evaluation of the economic impact of meeting the CLCPA's goals on the State's ratepayers, businesses, and jobs.

The comprehensive ratepayer cost impact analysis must determine the ratepayer impact of complying with the Scoping Plan and assess whether the Plan includes sufficient measures to avoid or reduce the upfront costs of consumers. The evaluation should include more specific cost study scenarios that show residential, commercial, industrial, and institutional energy consumers, along with local governments, the increased costs they are facing, not only on the electric system, but also on the gas system. The analysis should specify consumers' costs of installing or accessing renewable energy and energy storage, replacing their heating systems, upgrading their electric service, buying electric cars, figuring out ways to charge them, and it should detail how consumers will pay for these measures. Ideally, all sources of State and Federal funds should be identified and exhausted before costs are passed down to consumers.

C. Preserving Existing Renewable Facilities

The Scoping Plan acknowledges the role of the CES Tier 2 Maintenance Resource program to keep existing renewable facilities operational, but, despite my repeated urging, it does not mention the Competitive Tier 2 program nor the need to improve it. NYSERDA is taking comments, until tomorrow (January 20, 2023), on a Request for Information ("RFI") to improve the program, and the Plan does not mention this fact. After it receives comments on the RFI, NYSERDA is considering providing a petition to the PSC to develop a program to address the need to keep the renewable energy credits ("RECs") of existing renewable facilities in this state for them to count toward meeting the CLCPA's 70 by 30 and 100 by 40 targets.

Senator Parker has a bill, **S.7027 of 2022**, which is germane to this effort. The legislation seeks to change the existing Competitive Tier 2 to stop the erosion of New York's renewable energy baseline. This baseline is lower than it was when the CES first started. Renewable companies are exporting their RECs to other regions, where they are compensated more. Exported RECs do not count towards CLCPA targets. Preserving our mix of existing renewable energy facilities and retaining and expanding other non-emitting facilities are as important as the investments that developers are making to grow the State's renewable energy and energy storage resource portfolio.

D. Economywide Cap & Invest

During her State of the State Address, Governor Kathy Hochul proposed an Economywide Cap & Invest program, which was a recommendation of the Scoping Plan. The NYS Department of Environmental Conservation ("DEC") thinks it can develop and enforce the program through the promulgation of regulations as it did for the Regional Greenhouse Gas Initiative ("RGGI"), which is a cap & invest program to which power plant owners already are subject. Her 2023 State of the State document indicated that the program is intended to draw experience from programs such as RGGI and to potentially sync-up with other emissions reduction programs across the country.

The Scoping Plan includes provisions for RGGI power plants to be covered either exclusively under the Economywide Cap & Invest program, RGGI, or both programs with credits for RGGI allowance auction payments to be provided under the economywide program. The DEC has indicated that the details on the reconciliation of RGGI and the economywide program would be done through the development of a regulation to implement the new program. The details about how the RGGI program will be treated, in relation to the Economywide Cap & Invest program, are very important.

The Governor's Briefing Book proposed that allowance auction proceeds under the economywide program will support the State's investments in climate mitigation, energy efficiency, clean transportation, and other projects, in addition to funding a Climate Action Rebate. Her document stated that she is "seeking legislative partnership on crucial changes that can allow New York's Cap-and Invest Program to offer universal Climate Action Rebates to families across the state, helping defray their costs." The Governor intends to "propose legislation to create a universal Climate Action Rebate that, subject to a stakeholder and rulemaking process, is expected to drive more than $1 billion in annual cap-and-invest proceeds to New Yorkers."

The allowance auction proceeds under the Economywide Cap & Invest program, when they materialize after the program is established, should be used to address the upfront costs of consumers' compliance with the Scoping Plan, as I discussed in my testimony. These proceeds should also be used to help develop the DEFRs.

This year, Senator Parker has reintroduced **S.732**, which would require the DEC to determine and establish a carbon dioxide emissions price. That price would be transmitted to the NYISO for use in its carbon pricing proposal for the competitive wholesale electricity market. This approach is helpful for sending the needed market signals to spur investments in DEFRs, renewables, and energy storage, and for addressing consumers affordability. The Legislature should give its attention to this bill.

E. More Agency Staff

To implement the Scoping Plan, IPPNY supports increasing agency staff at the DEC, NYSERDA, PSC and the Office of Renewable Energy Siting ("ORES"). More personnel at the PSC and NYSERDA would help develop the program needed to provide the market signal to secure investment in DEFRs and retain existing renewables. Further, additional staff would help with evaluating the cost of the Scoping Plan on ratepayers and expanding financial assistance to improve consumer affordability in complying with the Plan.

DEC needs expert resources to create the Economywide Cap & Invest program and to develop regulations to make permitting decisions effectively and fairly. This effort is especially crucial for those permits under Title V of the Clean Air Act pursuant to Section 7 of the CLCPA. The DEC cannot rely solely on guidance and policies, as they do not provide the necessary regulatory certainty.

ORES also needs more staff to fairly address the siting of renewable energy facilities to meet the CLCPA's targets. There is an abundance of private investors in the process of investing in New York State. More than 88 renewable projects, totaling over 6,000 MW, have received awards under REC procurements by NYSERDA. NYSERDA issued new awards under the CES Tier 1 RFP to 22 large-scale solar and energy storage projects; this award brings the State to having 66% of New York's electricity from renewable sources, and the State is well on its way to the 70 by 30 target.

2. Caution Against Negative Consequences

There are areas of the Scoping Plan that the Legislature should not rush to enact. There are policies in place to ensure benefits to the State's energy consumers and negative consequences would result if those policies were to be jeopardized.

A. Competitive Wholesale Electricity Market Benefits Consumers.

More than 20 years ago, New York and many other states made the decision to redesign a failing electric utility industry model, transitioning from one where utilities and State authorities built new electric generation to a system where that function was handled by private independent power producers (IPPs). These IPPs have met the challenge throughout that time and will continue to do so as we work towards reaching the CLCPA's 2030 and 2040 targets. This change to the old electric industry model was designed to relieve ratepayers from decades of utility cost overruns and bad decisions and, instead, leave decision-making to the NYISO's competitive electric markets where the best solutions win through competition.

Since the introduction of competitive markets in New York, private investment has had a positive impact for electricity consumers. The competitive wholesale electricity market has provided benefits, such as: the shift of investment risks away from captive ratepayers to private investors and not having utilities or public power authorities own new generating facilities regardless of size; increased system reliability and availability; substantially reduced air emissions; and expansive growth in renewable energy, energy efficiency, and demand response resources.

B. Ratepayer Costs Would Rise Due to Public Power.

The PSC's determination that IPP companies can build and operate generation more efficiently than utilities was one of the main reasons the PSC decided to restructure the electric utility industry in New York and the NYISO's competitive wholesale electricity market was created. Consistent with this policy, the PSC barred the State's monopoly utilities from constructing and owning generation. This outcome was due to the potential that such ownership would inhibit entry by private market participants, which could result in less competition and higher consumers costs.

Costs for ratepayers of the New York Power Authority ("NYPA") and the utilities would increase without helping the State work towards the CLCPA's goals any quicker. NYPA has more than 1,000 customers, from local and state governments (such as the New York City Housing Authority, New York City government, the Metropolitan Transportation Authority, Westchester County government and numerous municipalities and school districts), to large and small businesses and non-profit organizations (such colleges, universities, and hospitals) that currently rely on its favorable energy rates. NYPA issues bonds to pay for its projects and sets its own rates. Recovery of all of NYPA's costs from its ratepayers is guaranteed.

C. Ample Independent Power Producer Investment Exists.

Currently, there is no shortage of private investment interest in New York, as discussed above in response to NYSERDA's RFPs. Further, there are sufficient projects in the works that would help push New York towards meeting its climate goals. These projects include about 50,000 MW of wind, solar, and battery storage in the NYISO's interconnection queue, proving that there is no need for public power to build renewables. There is no evidence that proposals submitted by IPPs in response to solicitations are inadequate or that the CLCPA's requirements cannot be met by private developers. Lastly, not only would the introduction of public power raise costs for consumers, but also public utilities and authorities cannot get through the NYISO's interconnection process or the State's energy siting process any faster than private developers. In fact, they would go to the end of today's line, waiting for studies to be completed, so they would not help us get closer to our climate goals any quicker.

D. Reliability Must be Maintained, and Replacements for Natural Gas Facilities Have Not Been Fully and Reliably Identified.

The Scoping Plan includes a process for transitioning away from the operation of fossil-fueled facilities to zero-emission facilities, while maintaining reliability. This provision within the Plan was informed by the Council's Power Generation Advisory Panel of which the NYISO was a member. The Plan indicates that the State should conduct biennial evaluations to assess electric system reliability, in consultation with the NYISO and the New York State Reliability Council (NYSRC). Further, the Plan states that any retirement and/or repurposing of existing fossil-fueled generation must be done in coordination with the PSC, the NYISO planning process (including its Reliability Needs Assessment and overall Comprehensive Reliability Plan), and consistent with NYSRC criteria that maintains reliability.

Facilities designated as needed for reliability must be able to continue to operate until competitive solutions, such as the DEFRs, are developed to meet identified reliability needs. The NYISO has studied the DEC's Peaker Emission Reduction Rule compliance plans and determined that reliability needs will occur on the New York City system in 2023, grow by 2025, and cannot be solely addressed by renewables and energy storage.

Just this week, the NYISO has warned that fossil fueled facilities that had been feeding the largest share of energy into the grid are already being taken offline faster than renewable sources can be added. The system's total resource capability was already lower last year than it had been in 2021. As the State's economy electrifies to meet the CLCPA's targets, electricity demand will grow, and the current electricity grid will need to be expanded at least three-fold. Accordingly, maintaining reliable supply is evermore essential; otherwise, the State would need to turn to an increased reliance on emergency energy purchases from likely higher-emitting neighboring states or regions.

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