

January 19, 2022

**To:** The Senate Finance Committee

**From:** Laurie Wheelock, Executive Director, and Counsel, the Public Utility Law Project of New York (“PULP”)

**Re:** The Legislative and Budgetary Actions Necessary to Implement the Climate Action Council (“CAC”) Final Scoping Plan

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Good afternoon, Chairs Krueger, Parker, and Harekham,

Thank you for the opportunity to testify before the Senate Standing Committees on Finance, Energy and Telecommunications, and Environmental Conservation. My name is Laurie Wheelock, and I’m the Executive Director and Counsel of the Public Utility Law Project of New York (“PULP”).

On July 18, 2019, the Climate Leadership and Community Protection Act (“CLCPA”)<sup>1</sup> was signed into law. New York State’s CLCPA is among the most ambitious climate laws in the world and requires the State to reduce economy-wide greenhouse gas emissions by 40 percent by 2030 and no less than 85 percent by 2050 from 1990 levels.<sup>2</sup> The law created a Climate Action Council (“CAC” or “Council”) charged with developing a scoping plan of recommendations to meet these targets and place New York on a path toward carbon neutrality. In January 2022, the Council released the Draft Scoping Plan (“DSP” or “Draft Plan”) and opened public comment with a deadline of July 1, 2022. The Final Scoping Plan (“FSP” or “Final Plan”) was approved by the Council on December 19, 2022.

In our initial comments on the Draft Plan, PULP discussed how equity and affordability must be the guiding principles of New York’s massive transformation and not an afterthought. PULP identified several items that should be modified in the DSP as well as other items that should be added. This included our urge for stronger communication, collaboration, and action between our State Agencies and Authorities and highlighted how existing low- to moderate-income (“LMI”) financial assistance plans needed to be reformed and integrated with energy efficiency and weatherization subsidies. Moreover, we described how existing rate-making structures used by the Department of Public Service (“DPS”) and regulated gas and electric utilities (“utilities”) should be reevaluated.

Our testimony today builds off of PULP’s July 1, 2022, comments on the DSP. We appreciate the opportunity to provide this testimony and the continued opportunity to share recommendations on how the State can achieve its targets under the CLCPA.

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<sup>1</sup> Chapter 106 of 2019 of the Laws of New York.

<sup>2</sup> See, Final Scoping Plan Full Report, p. 2.

**A. PULP’s comments on the Draft Scoping Plan focused on the need to consider the aspects of equity and affordability throughout the Plan, and the different elements that could be included to enhance these principles.**

**1. Stronger communication, collaboration, and action by our State Agencies and Authorities is required for New York State to hit our targets.**

In particular, for energy affordability to be achieved, having the NYS Office of Temporary and Disability Assistance (“OTDA”) involved in every aspect is essential. In PULP’s comments on the DSP, we flagged how important OTDA’s role is and the need to strengthen the agency’s role. Unfortunately, OTDA was referenced only five times in the DSP and now only four times in the FSP.

When it comes to specific areas where OTDA’s involvement is crucial, PULP will continue to emphasize the need for collaboration with the New York State Energy Research and Development Authority (“NYSERDA”). First, with specific assistance grants such as OTDA’s Heating Equipment Repair and Replacement (“HERR”) program and NYSEDA’s EmPower program. When a low-income homeowner needs to replace their furnace or boiler, they can visit their local Department of Social Services (“DSS”) or the Human Resources Administration (“HRA”) office to apply for the HERR grant, but replacement is currently limited to a fuel oil or natural gas furnace. Whereas a low-income homeowner who applies for EmPower through NYSEDA can qualify for an electric heat pump that will offer heating and cooling. OTDA and NYSEDA should be able to work together to refer low-income households to one another for assistance so that they are made aware of all of the programs available to them.

Similarly, the DSP discussed how EmPower now has a geo-eligibility component for households located in communities with more than 50% of residents at or below 150% of the federal poverty level. PULP recommended that a stronger working relationship with OTDA could result in more referrals from their agency to NYSEDA, including the recently announced regional clean energy Hubs, which are geared to help people apply for different energy efficiency programs.<sup>3</sup> However, we did not see any mention of this recommendation in the FSP.

Another example of where better coordination is needed is in situations where there are issues with submetered buildings and providing access to public benefits to low-income tenants (ex. assuring EAP low-income bill discounts when low-income individuals reside in a submetered building). Submetering is a helpful way for new, all-electric buildings or recently converted buildings, to operate solely on electric, while achieving energy efficiency targets.<sup>4</sup> However, having the account in the property manager or owner’s name means that the tenant cannot

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<sup>3</sup> The New York State Energy Research and Development Authority partnered with community-based organizations to establish the [Hubs](https://www.nyserda.ny.gov/All-Programs/Regional-Clean-Energy-Hubs) to provide a holistic, multidisciplinary approach to ensure that all New Yorkers have equitable access to the benefits of the state’s clean energy transition. Each Hub will be composed of a network of organizations in each of the state’s economic development regions to be responsible for establishing and fostering partnerships, over the next four years, in their area to deliver services at the community level and offer new ways to coordinate and promote clean energy outreach, engagement and education services throughout their communities; <https://www.nyserda.ny.gov/All-Programs/Regional-Clean-Energy-Hubs>.

<sup>4</sup> See, 16 NYCRR Part 96, the definition of submetering: A system of measuring electricity use in a residential unit in a mastermetered multi-unit residential premises.

directly apply for utility related assistance programs like the Home Energy Assistance Program (“HEAP”) or Emergency Energy Assistance (“EEA”), or be enrolled in the Energy Affordability Program (“EAP”). Instead, they rely on the property manager or owner to submit paperwork to become a HEAP vendor. Due to this reliance on the property manager or owner, rather than the tenant, there are times where a submetered building has not applied as a vendor, leaving its low-income tenants without the ability to avail themselves of certain utility specific benefits. As a result, PULP believes that greater coordination is needed here between NYSERDA, the Department of Public Service (“DPS”), and OTDA would result in a greater likelihood of the proper allocation of financial assistance programs to low-income tenants who pay for heat as part of their submetered bill.

By increasing coordination between our State agencies, including OTDA, NYSERDA, and the DPS, it is likely that low-income utility customers will be able to take advantage of all the assistance programs available, which will result in more affordable rates and better outcomes for these utility customers.

## **2. Modifying New York’s LMI financial assistance plans and programs.**

PULP’s direct service work has demonstrated the beneficial impacts of New York’s existing financial assistance plans and programs for LMI ratepayers. First and foremost, the Energy Affordability Program (“EAP”) has resulted in hundreds of millions of dollars' worth of direct savings for low-income utility customers throughout the State in the form of monthly bill discounts and arrears forgiveness.

EAP is a major driver to reduce the energy burdens of low-income households so that they pay no more than 6% of their household income on their electric and gas bills, a statewide goal established in a May 2016 Public Service Commission *Order Adopting Low-Income Program Modifications and Directing Utility Filings*. Despite the instrumental role it plays, PULP recognizes that the program in its current form is not perfect and that there are many avenues for improvement. The FSP agrees, and states that “the existing low-income energy bill discount programs administered by the major electric and gas utilities should be expanded.”<sup>5</sup> It, however, does not go into detail on what expansion could or should look like. As we stated in our comments on the Draft Plan, PULP believes that EAP should be modified from its current “cap-based” form that limits funding to 2% of the individual utility’s revenue, to a needs-based program that is funded sufficiently to help all households in need. Our research shows that most utilities are well underneath the 2% cap, while not every low-income customer that resides in their territory is currently enrolled in EAP.

Moreover, taking steps to ensure that all eligible low-income households are automatically enrolled in electric/gas companies EAP, which provides much needed monthly bill assistance to lower energy costs, is crucial. PULP believes that mandating data matching between the utilities and OTDA/local social services agencies is the easiest most efficient way to increase enrollment in the EAP.<sup>6</sup>

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<sup>5</sup>See, Final Scoping Plan Full Report, p. 206.

<sup>6</sup>See, S.8362A(Parker)/A.9099A(Cusick) of 2022, as an example of mandating data matching.

In addition, finding ways to ease the process of applying for and receiving utility related financial assistance will go a long way in helping households not exceed the 6% energy burden threshold. PULP is supportive of the automatic re-enrollment of eligible low-income households into the Home Energy Assistance Program (“HEAP”) grant as well as modifying the emergency-HEAP grant.<sup>7</sup>

Adequate program design is also key to ensuring that every household sees the benefits of electrification and that burdens are shared in an equitable manner. Beyond EAP, PULP is encouraged by the language included in the FSP relating to LMI community solar savings. PULP agrees with the suggestions of the Climate Justice Working Group (“CJWG”) that, “there needs to be a process in place to assure that the LMI community solar savings do not conflict, interfere, or in any way prevent access to the other LMI energy savings programs such as the Home Energy Assistance Program.”<sup>8</sup> PULP further supports the recommendation in the FSP that, “the state should eliminate barriers to enrollment for the target populations by streamlining and automating the processes where possible.”<sup>9</sup>

### **3. The Utilities’ Applications for Funding from the Federal Infrastructure Investment and Jobs Act of 2021**

The Biden administration has made an unprecedented investment to help states in their decarbonization transition. The Federal Infrastructure Investment and Jobs Act (“IIJA”) provided approximately \$550 billion in new funding to support climate action and make improvements to public utilities’ infrastructure. Funds are available for projects like electric generation, clean energy transmission and deployment, electric vehicle infrastructure, grid reliability, energy efficiency, access to clean water, and cybersecurity. As we discussed in our comments on the DSP, PULP believes that every regulated electric, natural gas, and water utility in New York must leverage all available federal resources to help us meet our CLCPA targets as it will be a significant method to offset costs to ratepayers.

While the FSP does now elaborate on what funding opportunities are available in a broader context,<sup>10</sup> it does not go into with specificity how the utilities should tap into them. The role that the regulated utilities play in driving our transition to a clean energy economy and supporting a just and equitable transition cannot be understated, and they need to be included in this discussion.

PULP suggested in our comments on the DSP, and will offer it here again for the Senate’s consideration, that DPS should direct the regulated utilities to file detailed reports on their plans as they relate to applying for federal grants, loans, and assistance, and other programs or

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<sup>7</sup> See, examples of existing legislation that authorize these reforms are, HEAP auto-enrollment (S.9578 (Mannion) of 2022) and Emergency HEAP (S.8361(Parker)/A.9121(Cusick) of 2022).

<sup>8</sup> See, Final Scoping Plan Full Report, p. 233

<sup>9</sup> *Id.* at 235.

<sup>10</sup> *Id.* at 423.

incentives made available through the IIIA and subsequent federal appropriations.<sup>11</sup> Absent sufficient participation by the utilities, New York will leave a significant amount of money on the table and risk the transition being unaffordable for millions of households. For New York State to be successful at hitting our targets under the CLCPA, every entity will need to do their part, including the regulated utilities.

#### **4. Energy Efficiency Programs and Greater Consumer Protections**

The CJWG’s call for a more expansive set of actions related to consumer protection in the DSP was addressed somewhat in the FSP. In addition to a safety net style guarantee of renewable energy to every household, the FSP now also discusses expanding access to community solar and aligning energy bill discounts for low-income households that are administered by the utilities.<sup>12</sup> PULP appreciates the recognition that current and future program design must account for fluctuations in usage as cooling needs increase because of a warming climate and as our state transitions from traditional forms of heating to more efficient electrification. Expanding bill discounts for income-eligible households through the State EAP and new community solar developments are important steps forward to reduce energy costs for vulnerable families. But as we discussed earlier, the FSP does not go into detail on what those expansions could or should look like.

Moreover, PULP will highlight again how important it is that our state agencies and authorities collaborate and promote complementary programs. For example, a measure that would assist with this process is to require OTDA to share energy efficiency program information with every individual who applies for any financial assistance through the Agency, either in person at their local DSS office or through MyBenefits.NY.Gov, or the ACCESS HRA website. The Legislature could also consider placing a similar requirement upon the Division of Housing and Community Renewal, which administered the Emergency Rental Assistance Program (“ERAP”) and the Homeowners Assistance Fund (“HAF”). Lastly, DSS and HRA should then direct the individual to their Regional Clean Energy Hub. This will amplify the exposure and increase the likelihood of enrolling more New Yorkers in energy efficiency programs.

#### **5. Rate Structures**

To achieve the State’s progressive climate goals, it will require a transition to a utility rate structure that promotes the conservation of energy and lessens reliance on fossil fuels. The rate structures used currently will simply not work, and PULP supports the FSP’s finding that “[they] will need to evolve to be supportive of and appropriate for higher levels of electrification of buildings and vehicles, with attention to equitable rate design.”<sup>13</sup> Specifically, PULP has been raising in rate cases, as well as in the generic Energy Affordability Proceeding, for “green rates” (i.e. those not based on high monthly fixed charges and “declining block rates”) where high energy users would pay more per unit used. PULP has also made clear that LMI customers with

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<sup>11</sup> See, Case no. 22-01783, 783, Petition of AARP New York and Public Utility Law Project to Institute a Proceeding Regarding Utility Applications for Federal Funding.

Description/Purpose of Filing: Petition of AARP New York and Public Utility Law Project to Institute a Proceeding Regarding Utility Applications for Federal Funding, <https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?Mattercaseno=22-01783>.

<sup>12</sup> See, Final Scoping Plan Full Report, p. 199, 205.

<sup>13</sup> See, Final Scoping Plan Full Report, p. 205.

high usage must be held harmless from the bill impacts of adopting green rates. Such an option is worthy of exploration.

Moreover, as we discussed in our comments on the DSP, and will reiterate here again, New York State should also consider what other states are doing in this field. For example, Percentage of Income Payment Programs/Plans (“PIPPs”), where payments are based on a percentage of household income and are consistent year-round, are used in many states and municipalities across the country.

This discussion will not be an easy one but one that PULP sees as tremendously important in the long term when it comes to achieving energy affordability. As a result, we urge DPS to conduct a study into different rate structures, including those outlined herein, so that the public can engage in a discussion on how best to structure rates.

## **6. The “Stranded Asset” Problem and Depreciation**

In PULP’s comments on the DSP, we identified two major potential issues that could result from an inadequately planned transition away from natural gas. First, the need to plan to prevent the loss of thousands of well-paying middle-class union jobs. Second, because gas utilities have the right to recover a reasonable return on investment in infrastructure, the last customers to leave the gas system will be stuck with the bill. We do not raise these concerns in order to slow the necessary process of decarbonization, nor are we suggesting that the recommendations of the FSP are insufficient. Indeed, the FSP makes clear that the Council is treating the issue with the seriousness it deserves.

For example, PULP is heartened to see the Council prioritizing the needs of LMI households in the transition away from natural gas. We agree with the Council’s assessment that the State must meaningfully engage with LMI households and residents of Disadvantaged Communities, “to enable these households to make energy efficiency upgrades and electrify affordably.”<sup>14</sup> PULP will continue monitoring the State’s progress on this front, to ensure that the burden of the gas transition does not fall disproportionately on those who can least afford to carry it.

## **7. Ownership of Electric Generation Assets**

As the Council states in the FSP, “New York needs to get new renewable energy projects built.”<sup>15</sup> The legal mandates of the CLCPA require our state to achieve 70% renewable electricity by 2030 and 100% zero-emission electricity by 2040. In order to achieve this goal, the deployment of large-scale renewable energy generation will need to accelerate. PULP acknowledges the large number of projects that have been or are scheduled to soon be brought online, and we applaud the hard work done by leadership and staff of NYSERDA, the Public Service Commission (“PSC”), and the Office of Renewable Energy Siting, to name only a few.

That said, PULP believes that the FSP presented a unique opportunity to look beyond business-as-usual and to reevaluate State policies that may be impeding our collective efforts to achieve the mandates of the CLCPA and ensure all New Yorkers can realize the benefits of expanded clean energy generation. To that end, PULP is generally supportive of allowing the investor-

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<sup>14</sup> *Id.* at 356.

<sup>15</sup> *Id.* at 231.

owned utilities to build and own a limited amount of renewable generation assets, provided the benefits of such reach low-income households and those living within disadvantaged communities and only if important guardrails are put in place to protect other ratepayers. However, serious consideration must be given to ensure that the cost of providing benefits to low-income customers do not outweigh the costs that would be incurred by all its customers to provide such benefits. Moreover, ratepayers, especially low-income households and those living within disadvantaged communities, should be held harmless if net revenues do not meet projections. PULP also believes benefits should have to be reassessed and readjusted annually to ensure low-income households energy burdens do not exceed 6%.

Finally on the topic of utility ownership of generation assets, something else the Legislature might consider is allowing utilities to build and recover the costs for such projects, but upon completion, turn over to another entity that would continue to provide the same benefits to DACs and low-income households. This would help limit the utilities' long-term involvement while allowing more local involvement and control in renewable energy.

In the absence of private entities stepping forward to build significant new large renewable arrays, the State should consider constructing and owning these assets itself through entities including our public authorities such as the New York Power Authority (“NYPA”), NYSEERDA, the Thruway Authority, and others. Last year the Senate passed legislation, the Build Public Renewables Act<sup>16</sup>, which would enable NYPA to build and sell the low-cost, utility-scale solar, wind, and hydroelectric projects necessary to transition our State to 70% renewable electricity by 2030.

As PULP noted in our comments on the DSP, renewable energy sources are extremely capital intensive in initial phases. In addition, low-income households throughout the state are paying more than 6% of their total income on energy bills, despite New York State policy that no household should be energy burdened at that rate. Unless we allow any willing entity to construct renewable power generation assets, and absent policies in place to ensure that those assets are geared toward reducing the energy burden of low-income households, PULP is concerned that we will not achieve the vital and compelling public policy goal of decarbonization.

**B. PULP supports initiatives intended to mitigate the costs associated with the CLCPA for LMI customers and Disadvantaged Communities that were discussed in the Final Scoping Plan and Governor Hochul’s 2023 State of the State Address.**

**1. Cap-and-invest**

PULP generally supports the proposed strategy, referred to in the FSP as “Cap-and-invest”, in order to achieve the goals outlined in the CLCPA for reducing greenhouse gas (“GHG”) emissions. Primarily, PULP is in favor of this initiative as potential proceeds earned from this program would be invested for the benefit of Disadvantaged Communities. As stated in the FSP, “the Council recommends gradually phasing in the program with cost containment mechanisms and rebates or subsidies to offset the burden of increased energy prices on LMI households”.<sup>17</sup> Such a rebate was discussed in Governor Hochul’s 2023 State of the State Address.

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<sup>16</sup> A.1466-D (Carroll)/S.6453-C (Parker) of 2022.

<sup>17</sup> See, Final Scoping Plan Full Report, p. 341.

PULP supports Governor Hochul’s proposal to create a Climate Action Rebate meant to reduce the financial burden on consumers, especially those in Disadvantaged Communities, and would want to review any legislative language to ensure that such a rebate sufficiently serves low-income New Yorkers. In particular, PULP is generally supportive of “rebates” or “subsidies” that can be issued to low-income New Yorkers in the most efficient means possible, rather than including burdensome requirements such as lengthy written applications, interview requirements, or self-attestation requirements. In short, PULP looks forward to learning more about this proposed program.

## **2. EmPower Plus and the Energy Affordability Guarantee**

PULP understands that home improvements like adding insulation, upgrading to energy efficient appliances, and switching from dirty fossil fuel heating systems to cleaner and more efficient electric alternatives are some of the best ways to reduce a household’s monthly energy bill. However, we agree with the FSP that such upgrades are costly upfront, don’t offer a clear return on investment right away, and quite simply, are not affordable for the vast majority of New Yorkers to do on their own.<sup>18</sup> For these reasons, PULP is a big proponent of NYSERDA’s EmPower Program, which offers free energy audits and grants to eligible households for these important upgrades. The FSP generally recommends the expansion of this crucial program so that it reaches more households in New York, but also to focus its efforts on getting homes ready for electrification and/or electrifying.

In Governor Hochul’s State of the State Address, she proposed a \$200 million expansion of the program, dubbed “Empower Plus”, that would open the existing program to 20,000 more low-income households. Moreover, she stated that any household that fully electrifies through the EmpowerPlus pilot would be eligible for another new incentive, the “Energy Affordability Guarantee.” The Guarantee is a commitment to keeping that customer’s energy burden at no more than 6%, in accordance with goals set forth in a May 2016 Public Service Commission *Order Adopting Low-Income Program Modifications and Directing Utility Filings*. PULP is generally supportive of the Governor’s proposals and looks forward to learning more once the Article VII language is made available.

## **C. Conclusion**

PULP appreciates the opportunity to provide this testimony on the CAC’s FSP. As the only independent nonprofit in New York State with the mission of advocating on behalf of low-income residential utility customers, PULP sees our ongoing role in this discussion as unique and important. We look forward to assisting with New York’s energy transition and plans to hit our targets under the CLCPA, while assuring New York’s most vulnerable have every ability to achieve affordable, clean energy. Thank you for the opportunity to provide our comments.

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<sup>18</sup> *Id.* at 193.