



**TESTIMONY OF EARTHJUSTICE BEFORE THE JOINT HEARING OF THE  
SENATE FINANCE AND ASSEMBLY WAYS AND MEANS COMMITTEES  
REGARDING THE FISCAL YEAR 2024-25 ENVIRONMENTAL AND ENERGY  
BUDGET PROPOSALS**

**February 7, 2024**

Good afternoon, my name is Liz Moran, and I am the New York Policy Advocate for Earthjustice. Thank you for the opportunity to testify today on the Governor's SFY2024-25 budget energy and environment proposals. Earthjustice, as the nation's first and largest national nonprofit environmental law organization, brings far-reaching change by enforcing and strengthening environmental laws on behalf of hundreds of organizations and communities. We are dedicated to defending the right of all people to a healthy environment, protecting our magnificent wild places and species, and fighting to curb climate change.

Last year proved to be a remarkable year for global climate change, and we felt it acutely here in New York. 2023 was the hottest year in recorded history, and every month from June through November broke the record global average temperatures.<sup>1</sup> New Yorkers were inundated with unprecedented events, like the most dangerous air quality ever experienced in the U.S. for multiple days from Canadian wildfires, which turned the sky orange and kept people indoors,<sup>2</sup> flooding so severe that hundreds of people were left stranded from inaccessible transportation,<sup>3</sup> and unseasonal heat waves, causing parents to be distressed about unsafe conditions for children in their schools.<sup>4</sup>

To top it all off, New Yorkers are paying more and more money for fossil fuel powered energy, particularly gas – the culprit of the climate crisis. Utilities are setting off a wave of rate hikes across the state, while resisting efforts to move save New Yorkers money and moving them off fossil fuels. Meanwhile, low-income New Yorkers have already been paying unreasonable sums of money towards their energy. The Public Utility Law Project found that in 2019, low-income New Yorkers, on average, are paying 13.4% of their income towards their energy bills. In some regions of the state, it is even higher, at a whopping 17%.<sup>5</sup> New Yorkers are paying more money for a gas system that ultimately the state must move away from, both to save people money and to address climate change.

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<sup>1</sup> Lauren Sommer, Rebecca Hersher, “2023 was the hottest year on record. Is this how it's going to be now?,” NPR, January 9, 2024, <https://www.npr.org/2023/12/28/1221827923/2023-hottest-year-record-climate-change>

<sup>2</sup> Gloria Oladipo, “New York City faces lower air quality from Canada wildfires,” The Guardian, October 2, 2023, <https://www.theguardian.com/us-news/2023/oct/02/new-york-city-air-quality-smoke-canada-wildfires>

<sup>3</sup> Mike Goodwin, Joshua Solomon, “Amtrak, Metro-North resume travel on tracks that flooded,” Times Union, July 12, 2023, <https://www.timesunion.com/news/article/amtrak-schedule-shows-train-running-renselaer-nyc-18196370.php>

<sup>4</sup> Hilary Howard, “Back to School or Back to Summer? A Heat Wave Arrives Late to New York,” The New York Times, September 7, 2023, <https://www.nytimes.com/2023/09/07/nyregion/nyc-heat-wave.html>

<sup>5</sup> Lea Webb, “The NY HEAT Act will help families and fight climate change,” Times Union, January 8, 2024, <https://www.timesunion.com/opinion/article/ny-heat-act-help-families-fight-climate-change-18589982.php>



Climate change is only exacerbating other issues in the state, like New York’s aging and deteriorating water infrastructure. Not only that, but New York still needs to respond to alarming levels of childhood lead poisoning, ongoing contamination from PFAS and other dangerous unregulated chemicals, and a range of other chronic environmental challenges.

After the year New Yorkers experienced, they are counting on lawmakers to ensure that the SFY2024-25 budget and legislative session is a landmark year for climate, the environment, and protecting public health. Some areas of the Governor’s proposed budget are worth praise, and should be included in the final budget, but overall, it falls far short of what is needed for New York to demonstrate the leadership residents expect.

Below we have summarized our positions on several key items:

- **NY HEAT Act (“The Affordable Gas Transition Act”)** – We applaud the Governor’s inclusion of these necessary and imperative amendments to the public service law which will give the Public Service Commission (PSC) the authority and direction to align gas utility regulations and system planning with the Climate Leadership and Community Protection Act (CLCPA). Importantly, it will eliminate the unjust 100-foot rule, which forces everyday New Yorkers to pay for the expansion of the gas system to the tune of more than \$200 million every year. NY HEAT also removes a mandate to provide fossil fuel to residential customers. This language, which obligates utilities to provide gas service to residential customers, has hampered the state’s transition to healthy, inexpensive heating and cooling. Unfortunately, the Governor’s proposal does not include language to protect New Yorkers from the rising costs of utility bills and for a timed downsizing of the gas system. Last year, the Senate included NY HEAT in their one-house budget and passed the legislation as a stand-alone bill. We urge the Assembly to follow suit this year with their one-house budget, and for the Governor and the Legislature to adopt the language of S.2016B/A.4592B in the final SFY2025 budget.
- **\$600 million for the Clean Water Infrastructure Act (CWIA)** – We are profoundly disappointed that the Governor has chosen to jeopardize public health by cutting this wildly successful, and essential program, by half its typical annual funding (at \$250 million). New York has over \$80 billion in water infrastructure needs, which the state has started to make a dent with thanks to the billions invested through the Clean Water Infrastructure Act. These needs were ignored for decades until the advent of the CWIA. Since 2017, the program’s annual \$500 million has supported hundreds of local water quality projects in every region of the state while protecting public health and creating hundreds of good jobs. The Legislature should ensure their one-house budgets increase funding by including a minimum of \$600 million for the CWIA this year to reflect growing needs due to strains on water infrastructure from our changing climate and the ongoing need to address unregulated and dangerous toxic chemicals.
- **\$400 million for the Environmental Protection Fund (EPF)** – Earthjustice is pleased to see a continued commitment to the Environmental Protection Fund; however, we strongly oppose the offloading of \$25 million to fund state agency staffing costs. The result of this is cuts to numerous programs within EPF. We urge the Legislature to reject the \$25 million offload, and to keep EPF funded at \$400 million.



- **Climate-resilient Farming** – We are pleased to see that funding for the Climate-resilient Farming program has been maintained within the Environmental Protection Fund.
- **Renewable Action Through Project Interconnection and Deployment Act (RAPID)** – Accelerating the siting of electric transmission siting is critical for New York to meet the mandates of the state’s climate law. Earthjustice supports the RAPID act. We also urge the Governor and Legislature to add language that ensures protections for environmental justice communities, by explicitly including section 7(3) of the Climate Leadership and Community Protection Act by reference.

Additionally, there are some important areas that have not been addressed in the Governor’s budget proposal. Earthjustice feels a strong budget should have the following:

- **Green Transit, Green Jobs (S.6089/A.6414)**, which will achieve a **zero-emissions transit bus fleet** by phasing out purchases of new fossil fuel transit buses starting in 2029.
- **\$100 million for small transit agencies to electrify their bus fleets.**
- **The Climate Change Superfund Act** (, to provide the State with much needed climate funding by making climate polluters pay.
- **At least \$600 million for the Clean Water Infrastructure Act**, with a \$4 billion total commitment over five years.
- **At least \$100 million for the Lead Service Line Replacement Program** within the Clean Water Infrastructure Act.
- **\$1 billion for the newly created Climate Action Fund.**
- **Increased funding and staffing for the Department of Environmental Conservation.**

The remainder of our testimony is organized by topic to provide detailed reactions to what is in the executive budget, as well as those that were left out. We also address some topics the legislature should prioritize this session, including:

- Addressing air quality from large warehouses across the state by passing the Clean Deliveries Act (S.2127A/A.1718A)
- Making Agriculture part of New York’s climate solutions
- Addressing lead in housing

### **Funding New York’s Environment**

The climate crisis is already harming New York’s public health and environment – and New Yorkers are paying the price, whether it’s from the costs of damages from extreme weather, health expenses, or the rising costs of energy bills from dependence upon fossil fuels. As we note earlier in our testimony, 2023 not only ended up being the hottest year in recorded history, but every month from June through November was a record-breaking month for global average temperatures.

But 2023 was far from the first hot, expensive year for New Yorkers. In 2022, an unprecedented bomb cyclone devastated Buffalo and caused flooding on parts of Long Island.<sup>6</sup> In recent summers, New York saw record flooding and heatwaves, resulting in deaths. The remnants of Hurricane Ida killed 46 people across four states that were hit by the storm, which includes 16 New Yorkers.<sup>7</sup> Devastation like this will only get worse as the climate continues to warm – New York can expect to see more frequent extreme weather events, increased flooding and heat waves, rising water levels, and more.

Investments into climate and our environment should be understood as a prevention mechanism from even greater expenses down the road. *The cost of inaction is greater than the investments necessary to meet New York’s climate goals* – according to the Final Scoping Plan, by more than \$115 billion.<sup>8</sup> But the cost benefits of proper investment are tremendous. The Final Scoping Plan estimated the creation of enough jobs to outnumber potential displaced jobs by a ratio of ten-to-one in 2030. According to an earlier report from the Climate Action Council, net benefits of meeting New York’s CLCPA mandates are in the range of \$80-\$150 billion.<sup>9</sup> Additionally, public health benefits range from \$160-\$170 billion.

The cost of inaction should come as no surprise – New York is already no stranger to the astronomical costs of the climate crisis. Hurricane Sandy, which took the lives of 44 New Yorkers in 2012, inflicted an estimated \$19 billion in damages and lost economic activity in New York City.<sup>10</sup> There have also been astronomical costs associated with public health damages due to air pollution and reliance upon fossil fuels. As one example, the health impact costs associated with fossil fuel combustion in buildings has cost New York City \$12.5 billion annually, and the rest of New York State \$9.2 billion annually.<sup>11</sup>

Additionally, the warming climate is placing additional strains on New York’s water infrastructure. With increased freeze and thaw cycles and increased precipitation, New York’s aging water infrastructure is suffering. Estimates dating back to 2008 found that New York will need to invest \$80 billion in drinking and wastewater infrastructure to ensure it is properly repaired, replaced, and upgraded.<sup>12</sup> These needs will only grow without proper investments to meet demands and bold policy and investments to address climate change.

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<sup>6</sup> Sarah Maslin Nir and Michael D. Regan, “Arctic air hits New York State, along with some flooding,” The New York Times, December 23, 2022, <https://www.nytimes.com/2022/12/23/nyregion/new-york-flooding-winter-storm.html>

<sup>7</sup> “As Ida Deaths Rise, N.Y. Leaders Look Toward Future Storms,” The New York Times, updated November 12, 2021, <https://www.nytimes.com/live/2021/09/03/nyregion/nyc-flooding-ida>

<sup>8</sup> New York State Climate Action Council, “Scoping Plan December 2022: Executive Summary,” page 5, accessed January 31, 2024, <https://climate.ny.gov/-/media/Project/Climate/Files/Chapter1ExecutiveSummary.pdf>

<sup>9</sup> New York State Climate Action Council, October 14, 2021 meeting presentation, page 34 <https://climate.ny.gov/-/media/Project/Climate/Files/2021-10-14-CAC-Meeting-presentation.pdf>

<sup>10</sup> NYC Recovery, “Impact of Hurricane Sandy,” accessed January 27, 2022, <https://www.nyc.gov/site/cdbgdr/hurricane-sandy/hurricane-sandy.page>

<sup>11</sup> Talor Gruenwald and Stephen Mushegan, “New York Emits More Building Air Pollution Than Any Other State,” RMI, May 18, 2021, <https://rmi.org/new-york-emits-more-building-air-pollution-than-any-other-state/>

<sup>12</sup> Matthew Hamilton, “New York’s water infrastructure needs estimated at \$80B over 20 years,” TimesUnion, February 13, 2017, <https://www.timesunion.com/local/article/New-York-s-water-infrastructure-needs-estimated-10930256.php>



New York must make meaningful investments into a transition to a zero-emissions economy without delay, as well as investments in climate resiliency and adaptation, water quality, land preservation, and more. Below we have outlined key funding and policy items (detailed further in subsequent sections) the SFY2024-25 budget must include if New York is to stay on track with outstanding climate and environmental demands:

- Include a minimum of \$600 million for the Clean Water Infrastructure Act (CWIA) and reject the Governor’s proposed cut of \$250 million.
- Include \$100 million for the Lead Service Line Replacement Program within the CWIA.
- Include the full \$400 million for the Environmental Protection Fund (EPF) and reject the Governor’s proposed offload of \$25 million for agency resources.
- Include \$1 billion for the Climate Action Fund.
- Include \$100 million for small transit agencies to electrify their bus fleets.
- Include the Climate Change Superfund Act (S.2129-A/A.3351-A), which would generate significant revenue that could go towards climate adaptation measures.
- Increase staffing and funding for the Department of Environmental Conservation.

*Include \$600 million for the Clean Water Infrastructure Act*

We are profoundly disappointed that the Governor has chosen to jeopardize public health by cutting the wildly successful, and essential Clean Water Infrastructure Act by half its typical annual funding (at \$250 million). This cut would set funding levels for water infrastructure funding nearly back to where it was in the SFY2015-16 budget, when the Water Infrastructure Improvement Act (WIIA), was first created, and only supported drinking and wastewater infrastructure. Today’s Clean Water Infrastructure Act supports far more than that, providing funding for essential programs to address lead service lines, PFAS contamination, septic systems, source water protection, and more.

We urge the Legislature to not only reject this cut, but to bolster the CWIA with a long overdue increase in funding, with a minimum total investment of \$600 million for the SFY2024-25 budget. Additionally, we strongly urge the legislature to delineate funding for each program within the CWIA so municipalities and the general public can know how much funding is actually available for various programs.

New York’s water infrastructure needs are tremendous. In 2008, reports from DEC and DOH found that, over the next 20 years, New York will need to invest approximately \$80 billion for all the needed repairs, replacements, and upgrades for our drinking and wastewater infrastructure. These needs went ignored until, starting in the SFY2015-16 budget, New York began to put significant investments towards water infrastructure repairs, replacements, and upgrades through the creation of the Water Infrastructure Improvement Act (WIIA) grant program.

In the SFY2017-18 budget, this was built upon with the creation of the Clean Water Infrastructure Act. Today, New York has invested \$5 billion towards water infrastructure and other water needs through the Clean Water Infrastructure Act.

But with over \$80 billion in water infrastructure needs, which doesn't include the funding needed towards source water protection, addressing unregulated dangerous contaminants, and replacing lead service lines, this funding remains a chip towards overall need. Additionally, strains upon our water infrastructure have grown due to increased precipitation and freeze-thaw cycles from the worsening climate crisis.

The Clean Water Infrastructure Act has been extremely successful, but the state's water infrastructure and clean water needs still far exceed the funding that is currently available. Environmental Advocates NY recently released report, "A New Era for New York's Water: An Analysis of Clean Water Infrastructure Act Spending," outlines the importance and reach of the CWIA, along with where funding falls short.<sup>13</sup> According to their research:

- \$3.4 billion has been awarded or spent since 2017, supporting 2,100 projects across every region of the state.
- 53% of CWIA funds have benefited environmental justice communities.
- Major programs, like the Water Infrastructure Improvement Act, are oversubscribed each year:
  - In 2023, there was record demand for funding – "Municipalities requested \$1.35 billion in grants for 482 projects, the highest amount requested and the highest number of applications in the program's 8-year history."<sup>14</sup>
  - Of these applications, 33% were awarded funding with a combination of WIIA and Environmental Bond Act dollars. This left 225 shovel-ready projects behind that were not awarded in the 2023 cycle.
  - This follows trends from previous years. In the 2022 grant cycle, WIIA funds were awarded to 73 projects for a total of \$279 million, but 246 shovel-ready projects were left behind, totaling \$665 million.<sup>15</sup> In 2019, 83 shovel-ready projects went unfunded, totally nearly one-third of the total shovel-ready projects submitted.<sup>16</sup> Environmental Advocate NY's previous analyses of WIIA grant rounds from 2015 to 2018 found that, at that time, only half of shovel-ready projects with complete applications received a grant award.<sup>17</sup>

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<sup>13</sup> Robert Hayes, A New Era for New York's Water: An Analysis of Clean Water Infrastructure Act Spending," Environmental Advocates NY, February 2024, <https://eany.org/wp-content/uploads/2024/01/A-New-Era-for-New-Yorks-Water.pdf>

<sup>14</sup> Robert Hayes, A New Era for New York's Water: An Analysis of Clean Water Infrastructure Act Spending," Environmental Advocates NY, February 2024, page 18, <https://eany.org/wp-content/uploads/2024/01/A-New-Era-for-New-Yorks-Water.pdf>

<sup>15</sup> Robert Hayes, *Untapped Potential: A New Era for New York's Water Infrastructure*, Environmental Advocates NY, February 2023, [https://eany.org/wp-content/uploads/2023/02/EANY-Untapped-Potential\\_FINAL.pdf](https://eany.org/wp-content/uploads/2023/02/EANY-Untapped-Potential_FINAL.pdf)

<sup>16</sup> Robert Hayes, *Untapped Potential: Building the Next Generation of Water Infrastructure*, Environmental Advocates NY, November 2021, p.6, <https://eany.org/wp-content/uploads/2021/11/EANY-water-report-Nov-2021-Final-1.pdf>

<sup>17</sup> Maureen Cunningham and Robert Hayes, *Untapped Potential: New York's Growing Water Infrastructure Need*, Environmental Advocates NY, 2020, [https://eany.org/eanypdfs/eany\\_2020\\_water\\_report\\_1.pdf](https://eany.org/eanypdfs/eany_2020_water_report_1.pdf)



WIIA, along with the other programs in the CWIA, both protects water and public health, and creates good jobs. The successes of the CWIA should be awarded with increased funding in the SFY2024-25 budget.

*Support \$100 Million for the Lead Service Line Replacement Program*

One important program within the Clean Water Infrastructure Act is the Lead Service Line Replacement Program (LSLRP), which has provided funding to help municipalities replace dangerous lead service lines. Most of the lead found in drinking water comes from lead service lines, according to the EPA. Lead service lines naturally corrode when water flows through them.

Lead is a potent neurotoxic chemical that has no known safe level of human exposure. Children are especially vulnerable to harm when exposed early in life, including in utero. There is a scientific consensus on the devastating harm that lead causes to children, especially irreversible harm in neurological development. Lead can also cause grave harm to the hematologic, gastrointestinal, cardiovascular and renal systems in children and adults. Lead is also a likely carcinogen, adding to the effect of other carcinogens in a child's environment. Communities of color are disproportionately affected. A study by the Centers for Disease Control and Prevention found that 11.2% of African-American children and 4% of Mexican-American children are poisoned by lead.<sup>18</sup>

With New York's old infrastructure, it should come as no surprise that lead service lines are pervasive across the state. There are estimates that, statewide, there are at least 500,000 lead service lines.<sup>19</sup> A recent report from the New York City Coalition to End Lead Poisoning (NYCCELP) found an estimated one in five New York City residents, or 21% of the City's population, may be drinking water transported through lead service lines.<sup>20</sup> The report also found that for NYC alone:

- Up to 41% of water service lines are lead or possible lead service lines.
- As many as 902,974 households have lead or possible lead service lines.
- As many as 1,845,119 individuals, or 21% of the city's population, live in a household with lead or possible lead service lines.

New York City is far from the only city with lead in drinking water issues – upstate cities like Troy, Newburgh, and Ilion have all exceeded EPA's action level for lead in drinking water in recent years.<sup>21</sup>

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<sup>18</sup> <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5809a1.htm>

<sup>19</sup> US EPA, "7th Drinking Water Infrastructure Needs Survey and Assessment," April 2023, [https://www.epa.gov/system/files/documents/2023-04/Final\\_DWINSAPublic%20Factsheet%204.4.23.pdf](https://www.epa.gov/system/files/documents/2023-04/Final_DWINSAPublic%20Factsheet%204.4.23.pdf)

<sup>20</sup> NYCCELP, "No Excuses, NYC: Replace Lead Drinking Water Pipes Now," July 2023, <https://nylcv.org/wp-content/uploads/NoExcusesNYCReplaceLead.pdf>

<sup>21</sup> Robert Hayes, A New Era for New York's Water: An Analysis of Clean Water Infrastructure Act Spending," Environmental Advocates NY, February 2024, page 16, <https://eany.org/wp-content/uploads/2024/01/A-New-Era-for-New-Yorks-Water.pdf>



Unfortunately, the Lead Service Line Replacement Program has not funded any projects since 2019. From a recent report released by Environmental Advocates NY: “Of the \$5 billion appropriated to the CWIA since 2017, only \$30 million has been provided to the LSLRP. Just as concerning, the LSLRP has not distributed any new grants since 2019. DOH data from July 2022 indicates that just 2,300 LSLs had been replaced by that time.”

Last year, the Environmental Protection Agency’s (EPA) proposed amendments to the Lead and Copper Rule (LCR), established in 1991 and intended to regulate the control and monitoring of lead in drinking water. The proposed new rule requires water systems to replace all lead pipelines within 10 years (and faster when feasible), lowers the levels at which agencies must take additional steps to eliminate lead in drinking water, and contains provisions intended to improve accuracy in identifying where higher levels of lead in drinking water are within communities.

Given the new LCR, along with an existing need for New York to address lead, it could not be timelier for the SFY2024-25 budget to give the Lead Service Line Replacement Program and long overdue funding boost of \$100 million. New York must speed up lead service line replacement to meet this new rule and protect the health of its residents.

*Support \$400 Million for the Environmental Protection Fund, Reject \$25 Million Offload*

The Governor’s Executive budget proposal maintains an increased funding level for the EPF with the inclusion of \$400 million. This funding will advance work to protect New York’s environment and improve quality of life in every county of New York State. However, the power of that \$400 million is jeopardized due to language that would allow \$25 million to go towards agency staffing. This offloading is an inappropriate use of EPF dollars and should be rejected by the legislature, as it has in years prior.

The Environmental Protection Fund offers much needed funding to various sectors in New York’s environment, and the benefits are apparent:

- According to a study by The Trust for Public Land, every \$1 invested in land and water conservation through the EPF returns \$7 to the state.
- The EPF supports 350,000 jobs across New York in a broad spectrum of industries including construction, agriculture, recreation, tourism, forestry, recycling, and recreational fishing.
- EPF-supported industries add \$40 billion to the state’s economy every year.

### **Building Electrification, Downsizing the Gas System, and Energy Affordability**

New Yorkers experienced a hot and costly 2023. The buildings sector is the largest source of greenhouse gas emissions in New York and energy bills are increasingly unaffordable. Rightsizing the expensive and dirty gas system must be a top priority in the SFY2024-25 budget. Earthjustice urges the Legislature to support the NY HEAT Act in the final budget.



Thankfully, the Governor’s proposed budget includes portions of the NY HEAT Act (S.2016B/A.4592B), referred to as “the Affordable Gas Transition Act,” however, the differences between these bills are notable, as we discuss in the following sections.

As we detail in the following section of our testimony, the NY HEAT Act will save New Yorkers money on their energy bills while ensuring that state regulation and oversight of gas utilities provide for the equitable achievement of the climate justice and emission reduction mandates set forth in the Climate Leadership and Community Protection Act (the “CLCPA”). It accomplishes this by:

- 1) Including provisions to cap utility bills, ensure affordability throughout gas transition processes, and address inequities in rate design
- 2) amending the utilities’ obligation to serve gas to all customers by allowing for neighborhood-scale decarbonization projects, while continuing to require safe and reliable access to energy
- 3) eliminating costly subsidies, such as “the 100-foot rule,” and
- 4) providing the Public Service Commission with the authority and direction to align gas utility regulation and gas system planning with the CLCPA's mandates, while ensuring affordable access to heating, cooling and other necessary services.

Unfortunately, the Governor’s proposal has some shortcomings, making it weaker than the NY HEAT Act:

- The Affordable Gas Transition Act removes all provisions related to affordability – including the codification of a goal to ensure households do not spend more than 6% of income towards utility bills.
- The proposal eliminates mandated timelines for necessary PSC proceedings to implement the law.

Last year, the final SFY2023-24 budget included a nation-leading policy requiring that, starting in 2026, all newly constructed buildings would be all-electric (2028 for larger buildings). This was a basic and necessary step to keep New York on a path to meet its climate law mandates. We must not lock the state into continued reliance upon fossil fuels. As we demonstrate in subsequent sections, newly built homes should no longer rely on the gas system. In fact, as the cost of fossil fuels continue to rise, going all-electric for new construction will help New Yorkers save energy costs.<sup>22</sup>

The natural next step for New York to take is passing the NY HEAT Act, which would lay the groundwork for a planned transition to downsize the existing gas system, prohibit the expansion of the gas system, prioritize neighborhood-scale decarbonization projects, while also protecting consumers.

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<sup>22</sup> Max Shron, Amit Kooner, Juan-Pablo Velez, “The impact of the All-Electric Building Act on the cost of heating new homes in New York State,” October 2022, [https://drive.google.com/file/d/14cm1hLk4DIIY\\_vK8gyOwTcRlAlaa3kUT/view](https://drive.google.com/file/d/14cm1hLk4DIIY_vK8gyOwTcRlAlaa3kUT/view)

*The NY HEAT Act will save New Yorkers Money*

New Yorkers' energy bills have become a runaway train. A wave of rate hikes is taking place in utility areas across the state – newly approved rates for NYSEG in the southern tier will cost the average ratepayer an additional \$40 each month. A proposed rate hike in the Hudson valley by Central Hudson would be an additional \$30 each month.<sup>23</sup> The sudden jump in energy bills is the result of expanding and managing the gas system. Low-income New Yorkers have already been paying unreasonable and inequitable sums of money for their energy use. The Public Utility Law Project found that in 2019, low-income New Yorkers, on average, are paying 13.4% of their income towards their energy bills. In some regions of the state, it is even higher, at a whopping 17%.<sup>24</sup> New Yorkers are paying more money for an ailing gas system instead of investing in neighborhood-scale decarbonization projects that are safe, reliable and cost effective. Passing NY HEAT will help enable New York to meet its CLCPA climate mandates, decrease emissions and combat climate change while also ensuring affordability.

The NY HEAT Act will reduce New Yorkers' energy by capping utility bills, eliminating needless subsidies to expand the gas system, saving them from future costs from expanding and maintaining the state's old gas infrastructure. To clearly outline some of these costs savings:

- Capping utility bills at 6% of a household's income will save the average family hundreds per year.
- Statewide, eliminating a subsidy known as "the 100-foot rule" will save the state \$200 million annually.

For decades, gas companies have covered the cost of connecting new customers to the gas system with a subsidy, which is often referred to as the "100-foot rule". The 100-foot rule is a form of cross-subsidy for new residential gas rate payers, who do not pay the cost of a new gas line by up to 100 feet from existing gas mains in order to reach their building. That cost – the new connection – is added to other capital costs that a gas utility can pass off and recover from all of its rate payers. In other words, gas companies have been able to offer new customers "free" construction service that is actually paid for by all New Yorkers.

Under this existing system, New Yorkers can expect to see their gas rates go up over the years. In fact, advocates estimate that extension allowances cost New Yorkers \$200 million each year. The 100-foot rule is a meaningful tool and incentive for gas utilities. From 2017 to 2021, utilities shifted just over \$1 billion of costs off to existing ratepayers for 170,000 new ratepayers. *This comes out to an average of \$5,880 for each new ratepayer.*

Additionally, given the rising costs of gas, and the increasing cost competitiveness of technology like heat pumps and thermal energy networks, many consumers who can afford to do so are transitioning their homes off gas – especially when their boilers and furnaces age out. As they do so, fewer customers will be left on the gas system, which will mean likely cost increases for

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<sup>23</sup> Lea Webb, "The NY HEAT Act will help families and fight climate change," Times Union, January 8, 2024, <https://www.timesunion.com/opinion/article/ny-heat-act-help-families-fight-climate-change-18589982.php>

<sup>24</sup> Lea Webb, "The NY HEAT Act will help families and fight climate change," Times Union, January 8, 2024, <https://www.timesunion.com/opinion/article/ny-heat-act-help-families-fight-climate-change-18589982.php>



those remaining customers. The affordability provisions in NY HEAT protect those customers, while also giving utilities the tools necessary to get those customers off gas.

*The NY HEAT Act will make electrification easier for New Yorkers*

The onus of transitioning away from fossil fuels can't fall on each individual New Yorker. While it is a testament to the cost competitiveness and appeal of all-electric technology that so many consumers are choosing to switch off gas, New York must have a planned transition away from the gas system. The NY HEAT Act, by removing preferences for gas and aligning our Public Service Law with the state's climate law, lays the groundwork for a transition that does not become a burden for regular people.

One way the NY HEAT Act does this is by amending what is known as “the obligation to serve.” Under current law, the obligation is specific to gas, rather than a simple obligation to ensure electric service and efficient heating, cooling, cooking, and hot water services. The gas utilities obligation to serve is a major obstacle and prevents utilities from exploring non-fossil fuel energy options, like neighborhood scale building decarbonization projects such as district geothermal.

Another barrier to the decarbonization of buildings is the statutorily mandated utility system extension allowances which require existing ratepayers to subsidize gas infrastructure hookups for new customers – known as “the 100-foot rule,” which we discuss earlier in this testimony. This subsidy incentivizes both gas system expansion and gas appliance installation. Removing natural gas line subsidies further tilts economics in favor of all-electric buildings.

Bringing about an equitable transition off gas will require intentional planning and dedicated assistance to some disadvantaged communities. By providing the Public Service Commission with the authority and direction to align gas utility regulation and gas system planning with the CLCPA, and requires the Commission to take a proactive role, the NY HEAT Act will facilitate a managed transition which will avoid burdening any subset of energy consumers with the spiraling costs of natural gas infrastructure.

*Myth vs. Fact: the NY HEAT Act is a Measured Transition off Gas*

Unfortunately, opponents to the NY HEAT Act have engaged in a misinformation campaign regarding what this legislation does, and the feasibility of adopting such a policy now. To address common arguments:

- **FALSE: The NY HEAT Act forces consumers off gas.** The NY HEAT Act does not mandate customers switch off gas immediately. Instead, it gives the Public Service Commission and utilities the legal tools they need to systemically downsize the gas system. This legislation is inherently a planning bill – it requires utilities to assess whether it makes sense to continue maintaining faulty, old infrastructure, or if an entirely new, non-fossil, system should be instituted. It will allow utilities to explore neighborhood-scale solutions, making it financially easier for homes and businesses to decarbonize.



- **FALSE: Ending the 100-foot rule means no one can get new gas service.** Ending what is known as “the 100-foot rule” would not mean there couldn’t be hookups to gas – it simply means regular ratepayers will not have to pay for the costs of the hookup.
- **FALSE: The NY HEAT Act means utilities can’t fix dangerous infrastructure.** The NY HEAT Act does not prevent utilities from fixing infrastructure that poses immediate threats or safety concerns. The changes to the public service law in the legislation require climate considerations in gas planning, but does not slow down or prevent the PSC or utilities from their obligation to public safety.
- **FALSE: Ending the “obligation to serve” means no one will be able to get new gas services.** The legislation does not prevent utilities from continuing to offer gas or restoring gas services after a shutoff due to nonpayment or power outage. The language changes, instead, amends an explicit mandate to gas and upon approval from the PSC, it allows utilities to offer neighborhood scale, decarbonization options. The changed language ensures customers have a right to electric service and efficient heating, cooling, cooking, and hot water services, regardless of energy source.
- **Who is left footing the bill if we have a 6% cap on utility bills?** The 6% cap on utility bills in the legislation simply codifies an existing state policy goal. Additionally, the legislation gives the PSC options to achieve this goal, including but not limited to:
  - Reducing costs for all customers by avoiding costly gas expansion and unnecessary gas line replacements, which will cost tens of billions of dollars in the coming decades
  - Directing more of the state’s community solar credits to low-income households to help reduce their bills.
  - Targeting more of the state’s energy efficiency programs to low-income households to help them save energy and reduce their bills. This also has the effect of reducing costs for all customers by reducing overall energy demand and overall energy infrastructure needs.
  - Examining and changing rate structures so that low energy users pay less and high energy users pay more. Current rate structures make gas cheaper the more you use. Changing that would immediately benefit many low energy users and will also encourage conservation, which will bring down costs for everyone.
- **Will a cap on utility bills incentivize people to use more energy? NO.** NY HEAT allows the Commission to set a reasonable limit on how much energy is included in the affordability protections, encouraging conservation and protecting all ratepayers.
- **Can all-electric technology work in cold climates? YES.** Households living in cold climates need geothermal or a good quality, cold-climate air-source heat pump specifically designed for harsh winters. Air-source heat pump technologies have advanced significantly, with leading products now performing well below 10 degrees Fahrenheit. This technology has even been tested as far north as the Arctic Circle.<sup>25</sup>
- **Is it more expensive to build all-electric? NO.** A report recently released by Win Climate found that, across the state, all-electric new construction would lead to a decline

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<sup>25</sup> Michael Gartman, Amar Shah, “Heat Pumps: A Practical Solution for Cold Climates,” RMI, December 10, 2020, <https://rmi.org/heat-pumps-a-practical-solution-for-cold-climates/>

in energy costs – a minimum of \$900 each year.<sup>26</sup> Additionally, an analysis from RMI found new all-electric single-family homes are in many cases cost-competitive, or cheaper, to construct than new fossil fuel-based homes.<sup>27</sup> Heat pumps also provide inexpensive air conditioning, which adds to their cost-effectiveness.

- **What happens if there is a power outage?** All modern heating systems, whether gas, propane, oil, kerosene, coal, or wood pellets rely on electric power to operate (wood stoves are the only exception). Some very old and inefficient fossil-fueled furnaces can work without electricity, but that is not the case for modern gas furnaces. No laws or policies in New York prohibit the use of fossil fuels for emergency backup generators.

Additionally, *all-electric buildings are already being constructed in New York*, including in Upstate. [Over 130 buildings](#) have already been constructed or are in the process of being constructed as all-electric in regions across the state. Some examples include:

- **Zero Place, a mixed-use, 4-story, carbon-free building** in late development in **New Paltz**, 64,000 square feet including 46 apartments and retail.
- **Autumn Gardens, a 72-unit public housing development** at 788 E. High St. in the **City of Lockport** transitioned to geothermal heating in 2015.
- **Horsefeathers, a 30,000 square foot 24-unit building** with restaurant on ground floor in **Buffalo** transitioned to geothermal.
- **Tompkins Financial Corporation Headquarters, 7-story commercial building** in **Ithaca** is all-electric relying on air source heat pumps.
- **City Centre, over 200,000 square feet of apartments, commercial and retail space** completely reliant on air source heat pump at 301 East State St in **Ithaca**.
- **100 Flatbush Ave, a 44-story mixed use tower** in downtown **Brooklyn** with 441 residential units and 30,000 square feet of retail.

### Accelerate Electric Transmission Siting

Earthjustice supports the Governor’s proposed Renewable Action Through Project Interconnection and Deployment Act (the “RAPID Act.”) We also strongly recommend the following is included in the final policy:

- Incorporation by reference of section 7(3) of the Climate Leadership and Community Protection Act to ensure environmental justice communities are protected.
- Explicit principles for equitable planning and criteria,<sup>28</sup> including:
  - Maximize the use of existing infrastructure, including rights of way and roads
  - Avoid land and wildlife conservation conflicts and cultural resource conflicts (historic sites, tribal resources, etc.).

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<sup>26</sup> Max Shron, Amit Kooner, Juan-Pablo Velez, “The impact of the All-Electric Building Act, “on the cost of heating new homes in New York State,” October 2022, [https://drive.google.com/file/d/14cm1hLk4DIY\\_vK8gyOwTcR1Alaa3kUT/view](https://drive.google.com/file/d/14cm1hLk4DIY_vK8gyOwTcR1Alaa3kUT/view)

<sup>27</sup> Claire McKenna, Amar Shah, Leah Louis-Prescott, “All-Electric New Homes: A Win for the Climate and the Economy,” October 15, 2020, <https://rmi.org/all-electric-new-homes-a-win-for-the-climate-and-the-economy/>

<sup>28</sup> See , e.g., Environmental Groups Outline Solutions to Accelerate Transmission Infrastructure (June 22, 2023) <https://earthjustice.org/press/2023/environmental-groups-outline-solutions-to-accelerate-transmission-infrastructure;> [https://earthjustice.org/wp-content/uploads/2023/06/06222023\\_transmission\\_whitepaper\\_final.pdf](https://earthjustice.org/wp-content/uploads/2023/06/06222023_transmission_whitepaper_final.pdf).

- Identify and prioritize development in previously disturbed areas; pre-screened resource zones for development; renewable energy zones or development sites that optimize the use of the grid; and projects that are necessary to enable the retirement of fossil fuel peaking plants in overburdened communities.
- Establish an Affected Communities Liaison whose responsibility is to be an ongoing one-stop shop for outreach to/from communities.

New York’s Climate Leadership and Community Protection Act includes necessary legal mandates to achieve net-zero greenhouse gas emissions by 2050, including goals of seventy percent of New York’s electricity to be provided by renewable energy sources by 2030, and one-hundred percent zero-emissions energy by 2040. Speeding up the siting of renewable energy projects is essential to meet these mandates, but that can’t be done if it isn’t strategically coupled with the acceleration of electric transmission.

Transmission plays a central role in achieving a 100% clean electricity grid. To accelerate the essential transition from fossil fuel-fired power plants to renewable energy, more transmission must be built to move clean energy across the state in addition to scaling up local, distributed clean energy resources. Transmission is also critical to ensuring grid reliability and resilience, particularly as New York faces extreme weather events caused by climate change. However, we are not building transmission at the pace and scale needed today: The current annual growth rate of transmission infrastructure in the United States is just 1 percent. The result is a backlog of roughly 8,000 generators waiting to connect to the grid and significant uncertainty for clean energy developers about whether and when their projects will be able to provide power to homes and businesses. The transmission bottleneck leaves huge climate benefits on the table, including those made possible through the Inflation Reduction Act.<sup>29</sup>

To build transmission faster and more fairly, we need smart reforms that target the drivers of the transmission bottleneck while preserving critical environmental, health, and community protections and enhancing community engagement.

Since the creation of ORES four years ago, the siting of renewable energy projects has increased significantly. Just over the past two years alone, 15 projects have been approved.<sup>30</sup> Of course, siting these projects must come with careful consideration of environmental and cultural impacts and community input. Under ORES, several project proposals have been amended following community feedback, and yet there is always room for improvement.

The RAPID Act builds upon the laws that created ORES, and includes several provisions that would improve community input and environmental considerations including:

- A farmland protection working group comprised of local experts.
- Requires permittee to provide a host community benefit.

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<sup>29</sup> Earthjustice, “Building Transmission to Secure a Clean & Equitable Electric Grid,” [https://earthjustice.org/wp-content/uploads/2023/06/06222023\\_transmission\\_whitepaper\\_final.pdf](https://earthjustice.org/wp-content/uploads/2023/06/06222023_transmission_whitepaper_final.pdf)

<sup>30</sup> Thomas Zambito, “Hochul plans to build NY’s energy transmission lines faster. Will upstate towns balk?,” LoHud, January 11, 2024, <https://www.lohud.com/story/news/local/new-york/2024/01/11/nys-state-of-state-how-ny-could-speed-up-transmission-line-buildout/72162946007/>



- Promotes the avoidance of environmental impacts related to siting by adopting the principle of “avoid, mitigate, offset,” and requires identification of those impacts.

However, to ensure community support for transmission projects, input from affected communities and environmental justice considerations could be strengthened with the incorporation of our above recommendations.

Getting this policy right and having a final budget that includes policy action to accelerate electric transmission siting is essential for New York to meet its renewable energy goals. Renewable energy is abundant upstate, but downstate communities will need access to that energy – it won’t be able to happen without corresponding electric transmission. Earthjustice urges the Governor and the Legislature to ensure the final budget includes policy that allows for accelerated, but equitable, electric transmission siting.

### **Reject False Solutions and Keep New York’s Climate Law Intact**

Unfortunately, during last year’s budget negotiations, policies were entertained by the Governor that would have gutted the impact of New York’s Climate Leadership and Community Protection Act.<sup>31</sup> Additionally, legislation has been introduced that would promote false solutions, such as hydrogen and RNG, and delay efforts to cut emissions and transition towards electrification. Earthjustice opposes such efforts, either in standalone bills, or as proposed loopholes in otherwise strong policy proposals.

#### *Funky Climate Math: Oppose Changes to New York’s Greenhouse Gas Accounting*

Last year, legislation (S.6030/A.6039) was introduced, and was considered during SFY2023-24 budget negotiations,<sup>32</sup> that would undermine New York’s work to meet the mandates of its landmark climate law, the Climate Leadership and Community Protection Act (“CLCPA”) by requiring the use of a 100-year timeframe for methane emission accounting instead of a twenty-year timeframe. The outdated 100-year timeframe vastly undercounts methane’s climate impacts, and this change would prevent decisionmakers from accurately assessing the harms of methane-based fuels and require the state to reevaluate its greenhouse gas inventory and Scoping Plan, delaying urgently needed action.

New York has demonstrated climate leadership by adopting a science-based greenhouse gas accounting system. According to the Intergovernmental Panel on Climate Change, methane remains in the atmosphere for under two decades and is 87 times more powerful as a greenhouse gas than carbon dioxide over a twenty-year period. The use of a twenty-year global warming potential is critical for capturing the true climate impacts of methane emissions that occur during the production and transportation of natural gas. Adopting the 100-year global warming potential would act as an accounting trick, making it look like gas companies had significantly reduced their emissions overnight when in fact they had done nothing at all.

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<sup>31</sup> Collin Kinniburgh, “Hochul Throws Climate ‘Grenade’ Into Budget Talks,” NYS Focus, April 4, 2023, <https://nysfocus.com/2023/04/04/hochul-climate-grenade-methane-accounting-clcpa>

<sup>32</sup> Ibid.



This legislation would further hobble New York’s climate efforts by excluding biogenic emissions from the State’s greenhouse gas inventory and treating forest biopower and anaerobic digestion as “renewable energy systems,” even though these energy sources can result in significant net greenhouse gas emissions. The CLCPA intentionally did not designate these sources as renewable because the law seeks to eliminate greenhouse gases to the greatest extent possible.

The legislation would act as a giveaway to gas companies seeking to prolong reliance on gas and delay the transition to a renewable energy economy. To achieve the CLCPA’s mandates New York must rapidly develop wind, solar, and energy storage capacity: an accounting system that conceals the climate impacts of combustion fuels will only hold the State back.

**The proposed change to New York’s greenhouse gas accounting system would weaken the CLCPA by putting a thumb on the scale for gas. Meeting our climate mandates requires moving away from combustion fuels and towards true clean energy solutions like electrification.**

*Support Direct, Targeted Emission Reductions Instead of a Low-Carbon Fuel Standard*

We are concerned that the Clean Transportation Standard, as proposed in the Scoping Plan and advanced in A.964/S.1292, is not the right tool to raise revenue or incentivize zero emissions transportation in New York, for three reasons. First, the Clean Transportation Standard is likely to incentivize the use of “low-carbon” alternative fuels and artificially encourage investments that would lock-in combustion infrastructure, even in cases where electrification is viable today. This will result in a slower transition to a zero-emissions transportation sector, and continued tailpipe emissions, particularly of harmful co-pollutants. In other states, similar policies have been found to prop up alternative fuel projects with dubious climate benefits.

Second, the Clean Transportation Standard would create a private market for investment in “clean transportation” not subject to oversight by New Yorkers, public agencies or the legislature. Moreover, investments under the Clean Transportation Standard would not be subject to the CLCPA’s requirement that a minimum of 35% of funds be invested in disadvantaged communities, thus undermining the state’s equity mandates.

Finally, it must be noted that a Clean Transportation Standard, or low-carbon fuel standard, would especially untimely given the ongoing regulatory process surrounding the upcoming Cap and Invest program, which is designed to reduce emissions, raise revenue, and support energy affordability across all sectors. Any low-carbon fuel standard or similar program would be duplicative of this broader effort, which is why the state’s Climate Action Council recommended it only in the absence of an economywide cap-and-invest program.

Unlike the cap-and-invest framework, a low-carbon fuel standard will not generate revenue for the state to implement the state’s landmark Climate Scoping Plan – instead, it will simply adjust prices for different transportation fuels and funnel revenue to private companies rather than New Yorkers. Earthjustice instead urges the legislature and state agencies to work towards

implementing existing transportation electrification policies and directly support the deployment of charging infrastructure.

### *RNG and Hydrogen are False Solutions*

Earthjustice urges the legislature to reject strategies built around combustion of alternative fuels such as RNG and hydrogen. Production and use of these fuels result in significant GHG emissions and other environmental impacts.<sup>33</sup> For example, hydrogen combustion creates significant emissions of nitrogen oxides (NOx), a precursor to both ground-level ozone and fine particulate matter. These pollutants adversely impact local air quality and can cause serious health problems, and disproportionately affect communities of color.<sup>34</sup> In fact, combusting hydrogen may produce NOx emissions at six times the rate of combusting methane.<sup>35</sup>

Additionally, a growing and overwhelming body of research demonstrates that blending hydrogen with natural gas for use in buildings is highly inefficient and does little to reduce GHG emissions.<sup>36</sup> Moreover, because of the difference in chemical properties between hydrogen and methane, *it is not feasible to use the existing natural gas infrastructure to combust hydrogen in buildings*.<sup>37</sup> Natural gas pipelines can only handle low hydrogen blends before creating safety risks. Relying heavily on hydrogen to power appliances to prevent these safety issues would therefore require utilities to retrofit or replace most pipelines, a huge capital investment, whereas electrification is significantly less disruptive because equipment and appliance replacements can occur incrementally using existing electrical infrastructure.

Additionally, less than one percent of hydrogen is produced via electrolysis and only about 0.02 percent qualifies as green hydrogen (meaning that it is produced from electrolysis powered purely by renewable electricity).<sup>38</sup> Green hydrogen production is currently limited to demonstration projects, with projects “mostly in the single-digit MW scale.” Instead, nearly all hydrogen within the United States is gray hydrogen, produced via steam methane reformation (“SMR”) of fossil gas, an energy-intensive process emitting both GHGs and harmful co-pollutants including NOx, fine particulate matter, carbon monoxide, and volatile organic compounds. And because electrolysis is so energy-intensive, hydrogen produced using grid-average electricity is even more carbon-intensive than hydrogen produced via SMR. Producing hydrogen is also water-intensive, and at a large scale could lead to water stress.

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<sup>33</sup> Sasan Saadat & Sara Gersen, Earthjustice, Reclaiming Hydrogen for a Renewable Future: Distinguishing Oil & Gas Industry Spin from Zero-Emission Solutions 10–11, 28 (Aug. 2021), [https://earthjustice.org/sites/default/files/files/hydrogen\\_earthjustice.pdf](https://earthjustice.org/sites/default/files/files/hydrogen_earthjustice.pdf)

<sup>34</sup> See N.Y. State Dep’t of Health, New York’s State Health Improvement Plan: Prevention Agenda 2019-2024 72–3 (updated Sept. 2, 2021), [https://www.health.ny.gov/prevention/prevention\\_agenda/2019-2024/docs/ship/nys\\_pa.pdf](https://www.health.ny.gov/prevention/prevention_agenda/2019-2024/docs/ship/nys_pa.pdf)

<sup>35</sup> Lew Milford et al., Clean Energy Group, Hydrogen Hype in the Air (Dec. 14, 2020), <https://www.cleangroup.org/hydrogen-hype-in-the-air/>

<sup>36</sup> Sara Baldwin et al., Energy Innovation Policy & Tech., Assessing the Viability of Hydrogen Proposals: Considerations for State Utility Regulators and Policymakers 2 (2022), <https://energyinnovation.org/wp-content/uploads/2022/03/Assessing-the-Viability-of-Hydrogen-Proposals.pdf>

<sup>37</sup> Id.

<sup>38</sup> Saadat & Gersen, *supra* note 2, at 7; Emanuele Taibi et al., Int’l Renewable Energy Agency, Green Hydrogen Cost Reduction: Scaling Up Electrolysers to Meet the 1.5°C Climate Goal 18 (2020), [https://irena.org/-/media/Files/IRENA/Agency/Publication/2020/Dec/IRENA\\_Green\\_hydrogen\\_cost\\_2020.pdf](https://irena.org/-/media/Files/IRENA/Agency/Publication/2020/Dec/IRENA_Green_hydrogen_cost_2020.pdf)

Production and use of other non-fossil fuels such as RNG also results in harmful environmental impacts and can increase net GHGs. Indeed, because RNG is chemically identical to fossil gas, its combustion emits the same level of GHGs.<sup>39</sup> Additionally, RNG cannot provide a meaningful source of energy: the supply of true, capturable waste methane (e.g., from uncontrolled landfills and wastewater treatment plants) amounts to less than 1% of current gas demand.<sup>40</sup>

Moreover, any strategy built around continued reliance on the gas pipeline system necessitates massive investments in replacement of leak-prone pipes. Utilities are collectively planning to invest billions of dollars in LPP replacement over the next several decades. These costs are grossly disproportionate to their climate benefits and most of these costs could be avoided through a more surgical, safety-based approach to focusing instead on the most hazardous and environmentally significant leaks. For these reasons, building decarbonization must be pursued through electrification, and reliance on alternative fuels must be rejected.

### **Maintain Progress on Transportation Electrification**

The Scoping Plan made clear that an expedited transition to zero-emission vehicles is necessary to reach CLCPA-mandated emissions reductions in New York. Vehicle electrification – particularly for medium- and heavy-duty vehicles – has added clean air benefits, since diesel emissions from trucks and buses are a major contributor to poor air quality and health impacts like asthma and other chronic respiratory illness.

The state has been adopting critical electric vehicle sales regulations like Advanced Clean Trucks and Advanced Clean Cars II, while implementation has begun on the state’s milestone zero-emission school bus policy. The Public Service Commission has expanded its infrastructure incentive program for light-duty vehicles and is in the middle of a planning process to catalyze electrification for trucks and buses. This year’s budget offers a key opportunity to keep up and accelerate the state’s progress.

We are calling for:

- **Green Transit, Green Jobs (A.6414 and S.6089)**, which will achieve a zero-emissions transit bus fleet by phasing out purchases of new fossil fuel transit buses starting in 2029, while aligning public procurement with a just transition.
- **\$100M in the budget to support small transit agencies electrify their fleets.**
- **The Clean Deliveries Act (A.1718A and S.2127A)**, which will fill a regulatory void by requiring that existing and new mega-warehouses develop plans to reduce emissions.

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<sup>39</sup> Alternative Fuels Data Center, U.S. Dep’t of Energy, [https://afdc.energy.gov/fuels/natural\\_gas\\_basics.html#:~:text=RNG%20qualifies%20as%20an%20advanced,liquefied%20for%20use%20in%20vehicles](https://afdc.energy.gov/fuels/natural_gas_basics.html#:~:text=RNG%20qualifies%20as%20an%20advanced,liquefied%20for%20use%20in%20vehicles) (last visited May 31, 2022).

<sup>40</sup> Sasan Saadat et al., Earthjustice & Sierra Club, Rhetoric v Reality: The Myth of “Renewable Natural Gas” for Building Decarbonization 9 (July 2020), [https://earthjustice.org/wp-content/uploads/report\\_building-decarbonization-2020.pdf](https://earthjustice.org/wp-content/uploads/report_building-decarbonization-2020.pdf)



### *Pass Green Transit, Green Jobs*

The Green Transit, Green Jobs bill (A.6414 and S.6089) will achieve a zero-emissions transit bus fleet by phasing out purchases of new fossil fuel transit buses starting in 2029. The bill prioritizes a just transition for workers, providing protections to existing transit employees subject to a collective bargaining agreement while spurring the creation of high-quality, green jobs. It is necessary to spur a faster transition to zero-emissions buses, which will improve air quality, especially in disadvantaged communities, and create good, family-sustaining jobs. Passing Green Transit, Green Jobs this session will implement the Final Scoping Plan’s recommendation to “transition to zero-emission public transportation fleets”<sup>41</sup> and drive investment in a vehicle segment that’s primed for electrification now – and one that has a substantial local supply chain.

**Electrifying transit buses helps eliminate one of the most harmful sources of local air pollution.** A Harvard study from 2021 found that health damages from transit emissions cost New Yorkers \$21 billion in 2016, and pollutants from buses in the New York City area had the highest health impacts of all vehicle types.

**Transit agencies are not moving quickly enough to adopt zero-emissions buses.** Despite the availability of clean alternatives and the suitability of transit buses for electrification, almost all the state’s 8,500+ transit buses burn fossil fuels such as diesel or fracked gas, spewing toxic pollutants into neighborhoods while exacerbating the climate crisis. Transit agencies will have to switch to zero-emissions buses eventually under the CLCPA, and the Green Transit, Green Jobs legislation ensures it will be done on an expedited but reasonable timeline.

**Electric buses are already cost-competitive with fossil fuel buses.** Purchase prices for electric buses are expected to be the same as or even less than for fossil fuel buses, and even now an investment in electric buses yields substantial cost savings over the lifetime of the buses. And federal legislation has boosted funding available to overcome purchase price premiums. Investing in ZEBs makes economic sense today and will not be burdensome for transit agencies in 2029 when the bill’s mandate begins.

**Investing in zero emissions buses can create good jobs.** The bill ensures investments in electric buses will be done in a way that protects workers and will create good, family-sustaining jobs, by using the U.S. Employment Plan, a “best-value” contracting framework to guide procurements of zero emissions buses and related infrastructure. Procurements using the U.S. Employment Plan have a proven track record of creating hundreds of high-quality jobs.

### *Pass the Clean Deliveries Act*

The e-commerce sector has experienced exponential growth in the last decade, with consumer demand for online goods surging by over 33% between 2019 and 2020 alone. The influx of demand coupled with online retailers’ same- or next-day delivery guarantees has accelerated the buildout of logistical “last-mile” warehouses, many sited disproportionately within or surrounding lower income communities and communities of color in New York State. The

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<sup>41</sup> FSP at 163.

expansion of e-commerce freight delivery is one of the reasons that freight trucks' total VMT is projected to increase by 54% by 2050 – threatening to stall progress on CLCPA emission reduction mandates, even with newly adopted truck electrification rules.

Massive e-commerce warehouse facilities and the high number of trucks associated with their operations are currently unregulated. To address the problem of increased diesel truck emissions from e-commerce warehouses, and the disparate health impacts in communities where these warehouses are clustered, the legislature should pass the Clean Deliveries Act (A.1718A and S.2127A), which would implement an “Indirect Source Rule” to drive electrification and emission reductions at e-commerce mega-warehouses. The lack of state oversight allows the industry to continue operating in a way that places a disproportionate impact on low-income New Yorkers and New Yorkers of color. A new report from EDF and ElectrifyNY demonstrates this impact, finding that one out of four New Yorkers live within 0.5 miles of a mega-warehouse, and that Black, Hispanic/Latino, and low-income individuals are 42%-59% more likely to be impacted.<sup>42</sup>

It is clear that targeted policies for warehouses (and other freight hubs) are needed to prioritize clean energy investments and emission reductions in communities most burdened by the status quo freight and goods movement system.

The bill would close the regulatory gap for these facilities, requiring warehouse operators to take measures to reduce air emissions. Key provisions include:

- **An air emissions reduction and mitigation plan** requiring warehouse operators to demonstrate emission reductions efforts by: acquiring zero-emission vehicles & charging infrastructure; installing solar panels on-site; using alternative transportation modes for incoming or outgoing trips; or paying additional fees
- **Enhanced air quality protections** for warehouses operating in disadvantaged communities or that impact schools and similar facilities
- **A permit requirement** for new warehouse developments or those proposing significant modifications
- **Ongoing reporting requirements** related to truck traffic and emissions mitigation measures
- **A zero-emission zones study** on the feasibility, benefits, and costs of implementing low- and zero-emissions zones in air pollution and congestion hotspots within New York State

### *Support School Districts in the Early Phase of Bus Electrification*

Many school districts have started taking initial steps towards meeting the state's electric bus mandates, which requires 100% zero-emission bus purchases by 2027 and a fully zero-emission fleet by 2035. Last year, NYSERDA released a School Bus Electrification Roadmap and the state released the first tranche of funds from the Bond Act's dedicated revenues to support school bus electrification. The Roadmap found that the transition away from diesel buses is technically

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<sup>42</sup> Env'tl. Def. Fund, *Warehouse Boom Places Unequal Health Burden on New York Communities* (2024), <https://globalcleanair.org/wp-content/blogs.dir/95/files//EDF-NY-Warehouse-Boom-Report-1-18-23.pdf>.



feasible and economically viable, but we know that the real-world journey will encounter some bumps in the road.

Earthjustice rejects any effort to weaken or repeal New York’s nation-leading electric school bus policy. We note that additional Bond Act funding will be rolling out soon, to supplement federal funding to offset the upfront costs. And we also point out the forthcoming policy changes and infrastructure funding that the PSC will be authorizing in the coming months, which will support the buildout of necessary charging infrastructure and grid upgrades.

At the same time, we support efforts to boost funding and staffing to help the State Education Department implement this first-of-its-kind policy. We also recommend the creation of an inter-agency task force dedicated to responding to real-world challenges encountered by school districts as they take their first steps towards deploying electric school buses.

### **Prevent Lead Poisoning**

Lead is a potent neurotoxic chemical that has no known safe level of human exposure. Children are especially vulnerable to harm when exposed early in life, including in utero. There is a scientific consensus on the devastating harm that lead causes to children, especially in neurological development. Neurological harm from lead is known to be irreversible. Lead can also cause grave harm to the hematologic, gastrointestinal, cardiovascular and renal systems in children and adults. Lead is also a likely carcinogen, adding to the effect of other carcinogens in a child’s environment.

On top of all of these harms, there is an association between higher childhood blood lead levels and violent or anti-social behaviors resulting in entry into the criminal justice system later in life. The Centers for Disease Control & Prevention (CDC), FDA, and EPA have recognized that there is *no* safe level of human exposure to lead.

New York’s childhood lead poisoning crisis is a serious failure in environmental justice. Children in communities of color and low-income communities shoulder a disproportionate health burden from lead hazards—both in amount and frequency of exposure—and are also more likely to suffer adverse educational and social impacts due to the effects of lead poisoning.

Lead is not just a concern for children. In fact, a 2018 study, which followed adults aged 20 and older from 1988-1994 through 2011, found that “low-level environmental lead exposure is an important, but largely overlooked, risk factor for cardiovascular disease mortality in the USA.”<sup>43</sup>

Lead poisoning is a major public health crisis that impacts millions of New Yorkers. Between 2011 and 2015, nearly 100,000 children in the state were newly identified with blood lead levels at five micrograms per deciliter, a level linked to serious and irreversible health effects. New

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<sup>43</sup> Prof Bruce P Lanphear, MD, “Low-level lead exposure and mortality in US adults: a population-based cohort study,” *The Lancet Public Health*, Volume 3, Issue 4, April 1, 2018, [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(18\)30025-2/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(18)30025-2/fulltext)

York is home to three of the top five cities with the highest rates of childhood lead poisoning in the country: Syracuse, Buffalo, and Poughkeepsie.<sup>44</sup>

There are several pathways of exposure to lead including:

- **Homes built prior to 1978 that contain lead paint.** Exposure occurs when the paint peels and cracks, which causes lead dust. Children can be poisoned when they swallow or breathe in lead dust, or consume chips of lead paint.
- **Water pipes.** This route of exposure has often been overlooked, but can be significant. *Formula-fed infants can receive most of their lead exposure from drinking water used in the formula.* New York has at least 500,000 lead service lines. Additionally, many homes may still have lead plumbing fixtures. More information on this issue can be found earlier in our testimony under the section *Support \$100 Million for the Lead Service Line Replacement Program*

The lead crisis is particularly acute in New York. Relative to other states, New York has both the greatest number (3.4 million) and the highest percentage (40.9%) of its housing stock built before 1950 – making New York housing particularly likely to contain deteriorating lead paint.<sup>45</sup> Parts of the state are at even higher risk of childhood lead poisoning. For example, in Buffalo, approximately 90% of the housing stock was built before lead paint was banned in 1978.

From 2014 to 2016, New York State recorded 6,348 cases of elevated blood lead levels of 10 µg/dL or higher in children under 6 years old. To put that into context, 10 µg/dL level is very high - in fact, nearly three times higher than what the CDC now considers to be an elevated level, and two times higher than what NYS considers an elevated level. This means that during that same timeframe, far more children had concentrations of lead in their blood at levels that would require intervention under New York law.

To ensure New York has a strong set of policies and funding to prevent lead poisoning, Earthjustice calls for the legislature to prioritize the following:

- **Pass the Lead Paint Right to Know Act (S.2353/A.4820),** which closes a gap in law to require property owners conduct lead paint testing and provide the reports of such testing before selling or leasing a property. The bill also requires that these test reports be submitted to the Department of Health, creating a much-needed record for tracking and mitigating residential lead contamination across the state. While federal law requires sellers to disclose the existence of lead-based paint when they know about it, it does not mandate the testing that would provide sellers with this information. Because of this legal

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<sup>44</sup> Leland F. McClure, PhD, Justin K. Niles, MA, and Harvey W. Kaufman, MD, “Blood Lead Levels in Young Children: US, 2009-2015,” *The Journal of Pediatrics*, 2016, <https://www.jpeds.com/action/showPdf?pii=S0022-3476%2816%2930206-2>

<sup>45</sup> U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, B25034: Year Structure Built, <https://data.census.gov/table/ACSDT1Y2016.B25034?q=2012-2016+ACS+5-year+Estimates> (data accessed Sept. 14, 2017) (numbers derived by adding the data from the “Built 1940 to 1949” and “Built 1939 or Earlier” columns and dividing the sum by the third column, which represents the total number of housing units).

gap, property is often transferred to residents without any knowledge of its lead-based paint hazards.

- **Include \$100 million for the Lead Service Line Replacement Program** (more information in earlier sections of this testimony).
- **Support funding, and watchdog implementation, for New York’s new Rental Registry and Inspection for Lead Paint Hazards Program.** The Governor and Legislature took an important step in the budget last year by requiring that multi-dwelling rental units in communities of concern be free of lead paint hazards, and that their lead-status be documented in a state-wide registry. However, this program will only be successful if it has adequate funding for implementation and enforcement. It is important that this program does not become an empty promise to the communities across the state that desperately need it.

### Agriculture

The contributions of the agriculture sector to greenhouse gas (“GHG”) emissions are often overlooked in the discussion on climate change, yet there are numerous policies and tools New York could adopt to transform this sector to help mitigate catastrophic climate change. Unfortunately, the Governor’s proposed budget does not offer the kind of funding or policies we need to address emissions from the agricultural sector.

Food systems contribute approximately one third of global and U.S. greenhouse gas emissions,<sup>46</sup> and agriculture is the largest contributor of non-CO<sub>2</sub> greenhouse gases.<sup>47</sup> Even if all other emissions sources immediately stopped, emissions from the global food system would still raise temperatures by more than 1.5°C above pre-industrial levels (the target limit for warming under the Paris Agreement) within 30 to 45 years, and might exceed a 2°C increase within 90 years.<sup>48</sup>

The State Department of Environmental Conservation (“DEC”) indicates that agriculture is responsible for 6% of total state GHG emissions, and that 92% of those emissions come from livestock.<sup>49</sup> Unlike other sectors in New York where emissions have already decreased, livestock management emissions have increased 44% since 1990.<sup>50</sup> And unlike the energy sector, whose contributions to climate change are largely in the form of carbon dioxide, agricultural emissions include methane, nitrous oxide, and carbon dioxide. Over 20 years, methane has a global warming potential about 84 times greater than carbon dioxide, and nitrous oxide has a global warming potential about 264 times greater than carbon dioxide.<sup>51</sup>

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<sup>46</sup> Crippa, M. et al. (2021). Food systems are responsible for a third of global anthropogenic GHG emissions. *Nat Food* 2, 198–209. <https://doi.org/10.1038/s43016-021-00225-9>

<sup>47</sup> United States Environmental Protection Agency, U.S. State-level Non-CO<sub>2</sub> Greenhouse Gas Mitigation Potential: 2025-2050: Agriculture Overview, Last visited January 18, 2023 <https://cfpub.epa.gov/ghgdata/nonco2/usreports/#page6>

<sup>48</sup> Clark, M. A. et al. (2020). Global food system emissions could preclude achieving the 1.5° and 2°C climate change targets. *Science* 370(6517), 705-708. <https://doi.org/10.1126/science.aba7357>

<sup>49</sup> N.Y. Dep’t of Env’t Conservation (“DEC”), Agriculture Forestry, and Other Land Use: 2022 NYS Greenhouse Gas Emissions Report, at 2, [https://www.dec.ny.gov/docs/administration\\_pdf/ghgafolu22.pdf](https://www.dec.ny.gov/docs/administration_pdf/ghgafolu22.pdf)

<sup>50</sup> Id.

<sup>51</sup> Intergovernmental Panel on Climate Change Working Groups I, II and III, Climate Change 2014: Synthesis Report 87 box 3.2 tbl.1 (2014), [https://www.ipcc.ch/site/assets/uploads/2018/02/SYR\\_AR5\\_FINAL\\_full.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf)

Food systems emit greenhouse gases at all stages of food production:

- Fertilizers and pesticides are made from fossil fuels in an energy-intensive manufacturing process.<sup>52</sup>
- Deforestation, destruction of grasslands, and other land clearing releases tremendous amounts of carbon stored in soils and plants.
- Excess fertilizer applied to crops releases nitrous oxide, a greenhouse gas with 300 times the warming power of carbon dioxide over 100 years.<sup>53</sup> On average, producers apply about twice as much fertilizer as the crops can use.
- Cows—both beef cattle and dairy cows—release “enteric” methane with every breath. Methane is about 25 times more potent than carbon dioxide over 100 years. Manure from cows, swine, and poultry also releases methane and nitrous oxide.
- A small number of large facilities are responsible for the majority of methane emissions. Mitigating emissions from the most concentrated facilities would make a large impact on total emissions.
- Food processing is energy intensive and releases carbon dioxide. New York has over 2,600 food processing facilities.<sup>54</sup>
- About one third of the food produced is wasted. Most of that ends in landfills where it rots and releases methane. This is the largest source of methane emissions in New York State.<sup>55</sup> About 40% of this waste comes from the retail/restaurant stage and about 40% from our homes.

Unfortunately, New York’s climate law roadmap, known as the Final Scoping Plan, does not go far enough to address emissions from the agricultural sector. The legislature should consider policies that fill the gaps left in the Final Scoping Plan, identified above, along with the following pieces of legislation that tackle ways to reduce the climate impact of food:

- **Good Food New York (S.6955/A.7264)**, which would allow municipalities to prioritize values-based standards for food procurement.
- **Food Donation and Food Scraps Bill (S.5331/A.5906)**, which expands the State’s food donation and food scraps recycling program.

### *Pass Good Food New York*

Currently, New York State food procurement laws require that local governments and institutions choose the lowest responsible bidder without considering other criteria. These laws,

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<sup>52</sup> EPA (2022). Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020. U.S. Environmental Protection Agency, EPA 430-R-22-003. <https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-chapter-5-agriculture.pdf>; Center for International Environmental Law. (2022). Fossils, Fertilizers, and False Solutions. [www.ciel.org/wp-content/uploads/2022/10/Fossils-Fertilizers-and-False-Solutions.pdf](http://www.ciel.org/wp-content/uploads/2022/10/Fossils-Fertilizers-and-False-Solutions.pdf)

<sup>53</sup> IPCC. (2007). *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*. [Solomon, S. et al. (eds.)]. Cambridge University Press. Cambridge, United Kingdom. 996 pp.

<sup>54</sup> USDA. (2021). Food and beverage manufacturing. US Dept of Agriculture. [www.ers.usda.gov/topics/food-markets-prices/processing-marketing/manufacturing/](http://www.ers.usda.gov/topics/food-markets-prices/processing-marketing/manufacturing/)

<sup>55</sup> Find the final scoping plan at: <https://climate.ny.gov/resources/scoping-plan/>



which have not been updated for over fifty years, are among the most restrictive in the nation and do not take into account the many externalities associated with food production and distribution.

The Good Food New York bill would permit local governments to adopt values-based standards for food procurement based on the national Good Food Purchasing Program (GFPP). These standards include benefits to local economies, environmental sustainability, valued workforce, animal welfare, nutrition, and racial equity. The law would allow local governments to select bids that fulfill one or more of these values provided their cost is no more than 10% greater than the cost of the lowest bid for that project.

This new model will push large contractors to improve their practices and move toward more ethical, clean, and climate-friendly production and supply practices. It will also expand access to opportunities for small and historically marginalized farmers, producers, and suppliers, who may not be able to achieve competitive pricing under the current procurement model. The bill allows New York municipalities to use their tremendous buying power to support safe, healthy, and sustainable food production and influence the market not just regionally, but nationwide.

Earthjustice supports this bill for both its climate benefits, as well as its consideration of the effects of food contracts on local economies, workers, public health, and animals. We envision a holistic food system, of which environmental sustainability is just one component. The Good Food New York bill will enable municipalities to invest in local business and promote practices that work for people, animals, and the planet. By implementing the Good Food New York bill, New York can help create a food system that nourishes our communities, celebrates our work force, treats animals with compassion, and protects the planet.

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Thank you for the opportunity to testify today. Earthjustice looks forward to working with the legislature to ensure New York's final SFY2024-25 budget rises to the challenge New Yorkers face from the climate crisis and other environmental harms.