



***Testimony to***

**Senate Finance Committee and Assembly Ways and Means  
Committee**

***FY 2027 Executive Budget: Environmental Conservation/Energy Issues***

***Submitted by***

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My name is Ken Pokalsky and I am Vice President of The Business Council of New York State, Inc. We are New York's largest statewide employer association, representing 3,500 private sector employers from across New York, in all major business sectors.

We appreciate this opportunity to submit comments for inclusion in the record for today's joint hearing on environmental conservation and energy related issues included in, and related to, the state's FY 2027 budget, including proposals in the Executive Budget and related issues that may be considered by the Senate and Assembly for inclusion in their respective budget resolutions, and that may be negotiated into the final budget agreement.

These comments, and our ongoing engagement with the Administration and Legislature, are focused on assuring an effective and efficient environmental regulatory and adequate, reliable and affordable energy, as essential components of the state's economic climate and its efforts to promote new investments, job growth and competitive wages.

Importantly, we strongly urge the Legislature to not think of environmental and energy economic development solely as a series of targeted regulatory programs, but also from the perspective of the state's overall cost of doing business and overall economic development strategy.

In addition to your ongoing consideration of budget proposals, we strongly believe that the state needs to do a better job of assessing the impact of major policy initiatives on the state's overall economic climate, on private sector investments and the creation and retention of jobs.

As always, we welcome the opportunity to discuss our concerns and recommendations with members of the Senate Finance and Assembly Ways and Means committee, and with other members of the State Legislature.

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## **Executive Budget Energy Provisions**

Utility “Monitors” - The Executive Budget (S.9008/A.10008, Part P) would allow the PSC to require a utility-specific “independent affordability monitor” if a utility has rates showing an electric or gas “energy burden” greater than 3% for residential customers. We have significant concerns regarding this proposal. First and foremost, it fails to provide clear definitions for key terms and concepts, leaving its implementation open to question, i.e., how would residential “energy burdens” be calculated and how would utilities obtain the necessary data to do so. Second, the Executive Budget language says that monitors can be imposed, “following any commission decision that establishes a change in rates that results in an energy burden greater than three percent for residential electric service or greater than three percent for residential gas service,” If 3% of (presumably) household income is an untenable energy burden, under what circumstances would such rates be approved by the PSC? It seems that rate changes above that threshold would only be approved if they represented necessary utility investments. Third, while it is unclear what level of resources an affordability monitor would be expected to have, as a practical matter we question how such a monitor could do a more effective job of analyzing a utility’s financial and operational activities than the entire staff of the Public Service Department. We recommend against approval of Part P.

Omnibus Reforms - Under the heading of “Affordable Utilities Omnibus Legislation,” the Executive Budget (S.9008/A.10008, Part N) has a three part proposal that would: requires gas, electric, steam and water utilities to submit CEO-to-median employee compensation ratios as part of major rate filings; direct the PSC to develop performance-based targets that tie executive compensation to an energy affordability index; and direct the PSC to require major rate filings to include a “budget constrained” alternative with a proposed rate increase less than the increase in the consumer price index. We do not see these proposals as providing meaningful rate relief or rate information for customers, and we oppose their adoption. For example, the focus on CEO and executive pay is a more political than substantive approach, as total utility costs (e.g., operations, maintenance, customer service, administrative costs including executive and employee salaries and benefits) and grid investments are typically 40% or less of a customer’s utility bill, with the majority going to pass-through electric and gas supply costs that the utilities do not control, and a variety of government imposed mandates, taxes and other costs. Executive pay is a fraction of total operational costs, and operational costs have been increasing far less than supply costs, and so are by no means a significant cost driver. Even so, the PSC already has ample authority to reject any utility costs they deem excessive. Instead, the state should focus on actual cost drivers, including policies that limit the supply of essential power and gas, and state-imposed taxes, fees and mandate. We will be providing the Administration and legislature with additional data on these factors as part of our ongoing advocacy on energy and budget issues.

## **Additional Energy Issues**

Energy Customer Relief - At a time when energy affordability is a significant and growing concern statewide, it is essential that the state consider all options for addressing consumer impacts. As part of this year’s budget discussions, the Administration and state legislature should consider repurposing billions in unspent ratepayer funds in the Clean Energy Fund held by NYSERDA and revenue from the Regional Greenhouse Gas Initiative to provide customers relief. This includes, in our understanding, about \$2.4 billion in dormant reserves within NYSERDA’s Clean Energy Fund. These dollars represent a significant opportunity to provide New Yorkers with immediate relief. For example, these funds should be used to expand home weatherization efforts that reduce energy consumption and to lower the income threshold to be eligible for bill relief, both of which will provide long-term stability for New Yorkers who need it the most.

Large Energy Users - The Governor’s 2026 state of the state message discussed “modernizing how large energy users connect to the grid,” with a focus on projects “driving exceptional demand without exceptional job creation or other benefits cover the costs they create.” While the proposal contained no

other details, this seems like an obvious reference to data centers. If the Administration advances such a proposal, we urge it to based it on a comprehensive review of both the impact of such facilities on energy utilities, the power grid and other customers, and also the role such facilities play in supporting other aspects of the state's economy. For example, economic development projects that require investments in the local energy distribution infrastructure are typically obligated to finance those investments, not the utility and its other ratepayers. Moreover, adding a large energy-consuming business to a utility's service territory can also result in the further sharing of utility fixed costs, thereby lessening costs borne by other consumers. Concerns about the potential impact of data centers are real, however the ISO's forecasts show that the impact of electrification in the building and transportation sector will have a far greater impact on load growth between now and 2035, and that a significant share of growth related to "large projects" are expected to be curtailable during peak demand.

As a final point, we are very concerned that any new mandates on large energy users could be extended to other categories of business, including new or expanded manufacturing facilities.

The bottom line is that New York needs to do far more than adopt new standards for data centers to address its mid- and long-term energy supply and reliability needs.

CLCPA Petitions - The PSC has received several petitions urging it to hold a hearing pursuant to provisions of the CLCPA (i.e., Public Service Law §66-p (4) to evaluate whether to temporarily suspend or modify the obligations for renewable power generation (70% by 2030). Given the significant uncertainty on achievement of the CLCPA's 2030 renewable energy targets, and continuing challenges facing new projects, it makes sense for the PSC to take advantage of the review option included in statute. It would be useful for the PSC to make the legislature and general public aware of its policy and intent in the review of these petitions.

Moreover, we urge the Administration and legislature to undertake a series review of the CLCPA and its aggressive and far-reaching emissions and renewable energy mandates. The recent state energy plan recognizes that the state is unlikely to meet two main requirements of the CLCPA – 70% renewable power and 40% emission reductions by 2030. It is crucially important that the state fully recognize and evaluate the real-world circumstances impacting its energy and environmental policies and make informed decisions about next steps, and the draft plan is a crucial step toward doing so.

Importantly, while missing these mandates may not have direct (or immediate) compliance or enforcement consequences for business, the state's response, and its decisions about future energy and environmental policies, could have significant adverse impacts on the state's economy, jobs, and households. Policies that result in energy reliability issues, limited energy supply or excess costs will be counter to the state's economic development efforts aimed at attracting chip fabs, hydrogen, AI, and other key industries to the state.

Adjusting the state's energy and climate policies and programs does not mean the state is abandoning its commitment to act on climate change. New York has been and will continue to be one of the most energy and carbon efficient states in the United States. Data has consistently shown that New York State is ahead of most states in its energy and emissions efficiency (on a per capita or GSP basis) and in reducing GHG emissions.

## **Executive Budget Environment Conservation Issues**

DEC Staffing - The Executive Budget proposes adding 45 new positions at Department of Environmental Conservation, including nine in the Air/Water programs, twenty-two in "Enforcement", and fourteen in Fish/Wildlife/Marine programs.

Overall, we recognize and support the need for adequate staffing at DEC and other regulatory agencies. We have heard concerns from Business Council members about excessively long delays in the review

and finalization of permit applications, including permit renewals and modifications necessary for new facility investments.

However, we urge that there be a better understanding of how these additional positions are to be deployed, and what functions they will support, before final approval of additional funding.

The Administration should provide the legislature and public – including the regulated community -- with additional information on how these new staff will be deployed. We will certainly support additional staff devoted to assuring more timely permit actions.

We understand that some of these positions will be working on implementation of the agency's new wetland regulations. While the legislature should assure that agencies have adequate resources to implement new statutory mandates, we would also urge the legislature to ask for detailed information on the implementation of new and expanded regulatory programs, like freshwater wetlands. It is important to assess not just environmental impacts but also impacts on the regulated community and key development projects. Broader assessment of program implementation could result in necessary statutory amendments to avoid unintended, excessive impacts.

SEQRA Reform - The Executive Budget (S.9008/A.10008, Part R) includes provisions to expedite the review and approval of certain categories of proposed projects, especially for housing, municipal water and sewer projects and "green infrastructure," including new exclusions from SEQRA review.

We support this proposal as an important first step in reassessing the process for project and permitting review. However, we believe more needs to be done. New York has already enacted significant project review reforms for renewable energy projects, and we note that the state of California has recently adopted reforms that include more project categories, including advanced manufacturing and transportation, among others.

Following the model set forth in the RAPID act and elsewhere, these approaches can include DEC-developed generic environmental impact statement for common and/or important categories of projects, the DEC establishing general and site-specific environmental standards for specific project categories, with project approval within 6 or 12 months of determination of complete application, and the DEC establishing "fast-track" process for applications that meet certain criteria (e.g., replacement projects, projects achieving reduced emissions, etc.).

We have submitted other project- and permit-review reform proposals to the Administration. They include:

- Require DEC to abide by timelines for permit applications set forth in ECL §70-0109 and compile an annual report on permit review timeline compliance, by permit type. Businesses have seen significant delays for permit applications, especially those invoking CLCPA consistency determinations and disadvantaged community impact assessments.

- Clarify the standard for when an application is "complete." An application must be declared "complete" under the DEC Uniform Procedures (Part 621) and the State Environmental Quality Review Act ("SEQRA") before it can be put out for public comment. Many applications take months and even years before the DEC declares the application to be complete. The regulations need to be amended to clarify that applications do not need to be "perfect" or answer every question before they are put out for public comment.

- For DEC adjudicatory hearings, heighten the standard for when an issue can be adjudicated once DEC Staff have found the application complete and have issued a tentative determination to approve the application. Currently, DEC Administrative Law Judges can dismiss DEC Staff determination that an application is complete and meets all regulatory requirements. This results in protracted hearings after an already protracted pre-hearing/application process.

- Clarify that comment periods and other dates in the permit application and hearing process are mandatory, absent a compelling showing of good cause to extend them. The discretion of the DEC staff and ALJs to extend these time periods should be constrained as the current approach to granting extensions is counter-productive to the intent of the process.

- Do not allow SEQRA to override established regulatory standards. DEC policy and practice allow for the implementation of permit conditions that exceed a standard promulgated in a regulation. This approach is contrary to the SEQRA itself and makes it difficult to design facilities when an applicant cannot be certain of the standard against which it is designing. This can lead to significant cost increases and delays to project development.

As a final point, several provisions of the Executive Budget reforms focus on projects on “previously disturbed land,” which would include but not be exclusive to brownfield sites. It seems like regulatory mandates on brownfield projects are making them more costly and less certain with regard to liability projections. Can you characterize the level of activity in the brownfield program over the past several years, especially for housing projects, and can you provide data on the number of applications, workplan approvals, and certificates of completion?

Solid Waste Program Appropriations - In the capital projects bill the Executive Budget provides \$19.6 million for “Municipal waste reduction or recycling projects” and another \$650,000 for “Secondary materials regional marketing assistance,” with similar amounts approved in prior years’ budgets. We urge the legislature to evaluate how such funds are being deployed, and the extent to which they are being effectively used to support the state’s ongoing solid waste management efforts. For example, the DEC’s recently completed recycling needs assessment phase 2 report noted that, “New York has extensive recycling programs and infrastructure, *yet still lackluster performance*. A stronger policy framework and additional resources are needed to . . . engage the public to participate.” Specifically, the Phase 2 report shows that 97% of New Yorkers have ready access to recycling programs, and that most of these programs accept the most widely used categories of packaging. Under longstanding provisions of the Environmental Conservation Law, the DEC is directed to provide technical assistance and education programs to report its solid waste management policies. The legislature should carefully evaluate the extent to which these annual appropriations are supporting existing ECL mandates. This assessment should include, among other things, a public review of a list of projects to which these funds were applied under the current budget, especially those related to consumer education and the support for secondary materials markets.

## **Other Environmental Conservation Issues**

Environmental Justice Reviews - Since the appointment of its initial Environmental Justice Advisory Committee in 1999, DEC’s environmental permitting programs have included consideration of potential impacts on minority and low-income communities. These policies have evolved over the past several decades. However, the adoption of new and expanded programs has not been done in a coordinated way. Today, the state has four separate programs, with differing applicability, assessment and decision-making criteria.

Earlier programs include:

- Commissioner Policy 29, Environmental Justice and Permitting
- DEP 24-1 / Permitting and Disadvantaged Communities
- 6 NYCRR Part 487 – Environmental Justice Analysis for Major Electric Generating Facilities

Most recent, the state legislature adopted Chapter 49, Laws of 2023, which – as of its effective date on December 30, 2024 – imposes explicit assessment and decision-making criteria for specific environmental permits that may impact “disadvantaged communities.” To date, the DEC has yet to

propose guidance or regulations for the implementation of Chapter 49, so key definitions and program details are yet to be known, including the extent to which the Chapter 49 process will be coordinated with or integrated into existing policies.

We urge the Administration and legislature to consider adoption of a single set of definitions and mandates for the review of potential environmental impact on vulnerable and overburdened populations and areas. The current approach can require multiple reviews of a single project, with different mandates and decision-making criteria, making project reviews more costly and complex than necessary. We believe an integrated environmental justice program can be fully effective in addressing the state's environmental equity goals.

2025 Title 13 Amendments - We appreciate that the Administration and legislature made significant improvements in the FY 2026 budget amendments to the state's remediation programs (see Chapter 58, Laws of 2025, Part RR). However, we have significant concerns with one provision in the final Part RR that could impose an unintentional but significant disincentive against BCP participation by volunteers, and result in project developers and potential financiers avoiding such sites and projects, to the significant detriment of New York.

The final Part RR adopted the state's first-time definition of "responsible party" under its inactive hazardous wastes (aka "superfund") program. The new ECL § 27-1301.11(a) defines "responsible person" as:

any person who currently owns or operates a site or any portion thereof **except for a volunteer**, as defined in subdivision one of section 27-1405 of this article, **that is participating under a brownfield cleanup agreement** pursuant to section 27-1407 of this article, **that is in full compliance** with the requirements of this chapter with respect thereto, **and is not engaging with the department in bad faith** with respect to any provisions of this title.

This language limits the protection to volunteers that are in "full compliance" with the ECL with regard to their BCP site and that have not engaged in "bad faith" with regard to provisions of Title 13. We are very concerned with these limitations that could trigger significant and even perpetual liability on a BCP volunteer. Under the "full compliance" provision a minor, non-material violation could be the basis for a change in liability status, as could an act that is determined to constitute "bad faith," a vague, non-defined term.

Having clear, reliable liability rules is crucial to the continued success of the BCP program and are necessary to entice volunteers to enter the program and to secure project financing. A volunteer should be entitled to liability protections that are set forth in its BCP agreement, which reflect provisions of Title 14. Excessively broad limitations on liability protection could impose significant and costly liability on a volunteer that did not contribute to or exacerbate the environmental or public health impacts at a BCP site.

BCP volunteers should be able to rely on general compliance with existing statutory requirements and the provisions of its executed BCP agreement, and remain protected from significant liability based on minor non-compliance that does not materially impact site conditions. Without clear liability protections, it will be difficult for volunteers and their financial backers to undertake such projects, with the potential to be designated a responsible party and be subject to superfund's "strict, joint and several" liability under state superfund.

To address our concerns, we recommend the following amendments to the Part RR language.

11. "Responsible person" or "person responsible" for the disposal of hazardous waste at a site means:  
(a) any person who currently owns or operates a site or any portion thereof **except for (i) a volunteer and its successors and assigns**, as defined in

subdivision one of section 27-1405 of this article, that is participating entitled to liability protection under a brownfield cleanup agreement pursuant to section 27-1407 of this article, that is in full compliance with the requirements of this chapter with respect thereto, and is not engaging with the department in bad faith with respect to any provisions of this title and (ii) a person that is a bona fide prospective purchaser pursuant to section 27-1323(5) of this chapter;

FY 2026 Senate Resolution – In the FY 2026 budget cycle, the Senate resolution contained several provisions that we strongly opposed. We urge the legislature to avoid including these and other new, costly regulatory mandates in the final FY 2027 state budget.

- The Senate budget resolution “calls on the Executive to immediately issue all draft regulations necessary to implement a cap-and-invest program under the CLCPA, and to finalize regulations and begin emissions allowance auctions as soon as possible.” While any version of a GHG cap and trade rule will impose new costs and mandates on regulated entities, we appreciate the DEC’s efforts to reach out to the regulated community and address many of our most significant concerns in the draft rule. But the legislature should consider several factors regarding the promulgation of this rule. First, based on information derived from the state’s annual GHG inventory, and significant uncertainty with regard to other regulatory programs intended to drive GHG emission reductions (including New York’s application of California vehicle emission rules and the state’s e-building statute, among others), it is highly unlikely that the state will achieve the CLCPA 40% emission reduction by 2030 target. Clearly, a cap and invest rule by itself could not achieve such results by 2030 without draconian allowance limitations – and significant adverse impact on the state’s economy. Second, to a large extent, a cap and trade rule will be an assessment on fossil fuels, with the cost of such assessments certain to be passed on to consumers. Finally, with the new GHG reporting rule only just taking effect for the 2026 calendar year, it is unclear that the state would have sufficient data on which to base implementation of a new cap and trade program this year.

- It proposed (S.3008-B, Part FFF) legislation requiring businesses with more than \$1 billion in annual global revenues to submit annual reports on their global scope 1, 2 and 3 greenhouse gas emissions. We had significant reservations about this new regulatory mandate in 2025; those concerns are amplified now that the DEC has issued its greenhouse gas emissions reporting rule (6 NYCRR Part 253) that will support a future “cap and invest” program. Many businesses are struggling to understand and develop compliance plans with the new Part 253, particularly for both the “upstream” out-of-state emissions and downstream supply chain emissions from fossil fuels or products. To date, businesses have received limited additional compliance guidance from the state. We would strongly oppose the adoption of an additional GHG reporting mandate in 2026.

- In addition to increasing most civil penalties under the Environmental Conservation Law, the resolution (S.3008-B, Part KKK) directed directs most civil penalty income to a new “environmental enforcement account” to partially finance DEC enforcement activities. We strongly opposed this provision last year, as we opposed a similar Senate bill in the 2026 session (see S.4033-B). The Business Council has a longstanding opposition to linking civil and criminal fines to specific budget items or appropriations, as such arrangements can unduly influence the assessment of civil penalties. Penalties should be based on the nature of the violation being addressed, not the need to fund a budget appropriation. Likewise, adequate funding for state oversight and enforcement efforts should not be dependent on penalty assessments. Ironically, this bill reverses earlier legislation (Chapter 60, Laws of 1993, section 22) which redirected ECL penalty proceeds from the environmental enforcement account (renamed the environmental regulatory account) to the state’s General Fund. The DEC’s long-standing civil penalty policy directs that penalties should reflect a “benefit component” designed to “remove any economic benefit that results from a failure to comply with the law,” as well as a “gravity component,”

reflecting the seriousness of the violation. These existing statutory provisions and DEC's civil penalty policy set forth an effective, reasonable and consistent approach to setting financial penalties for civil and criminal violations of the Environmental Conservation Law. Further, it is fundamentally bad public policy to (directly or indirectly) make program funding requirements a component of penalty assessments.

We appreciate this opportunity to submit comments and look forward to working with members of the Senate Finance Committee, the Assembly Ways and Means Committee, both houses' Environment Committees as well as other members of the state Legislature and Administration, on assuring an effective, workable, and affordable achievement of the state's energy and environmental conservation goals.