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Testimony
Hearing on Implementation of the Climate Action Council Final Scoping Plan
Senate Standing Committees on Finance, Energy and Telecommunications
and Environmental Conservation
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I. Introduction

Chairpersons Liz Krueger, Kevin Parker and Peter Harckham and other members of the Senate Finance, Energy and Environmental Conservation committees: my name is Bob Cohen. I am the Policy Director of Citizen Action of New York (Citizen Action), a grassroots organization with thousands of members in eight chapters and affiliates throughout the state, located in Buffalo, Rochester, Binghamton, Utica, Albany, Kingston, New York City, and Long Island.¹ A significant percentage of our membership, leadership and staff are people of color, and we organize in some of the most distressed neighborhoods in our state.

Citizen Action is a member of the Steering Committee of NY Renews, a statewide climate coalition of over 300 organizations that led the fight for the 2019 passage of the Climate Leadership and Community Protection Act (“CLCPA”).² In conjunction with other partners, we have also successfully organized opposition to a number of proposed fossil fuel projects in upstate New York, including the NED (Northeast Energy Direct) and “Albany Loop” pipelines, and successfully organized in 2019 to convince the State to not make additions to state facilities on Sheridan Avenue near the State Capitol that would have increased the use of fossil fuels and harmed an environmental justice community (discussed further below).

¹ The Long Island Progressive Coalition is our Long Island affiliate.

² However, this testimony does not necessarily represent the views of NY Renews.

Citizen Action praises your committees for holding these important hearings about the next steps, particularly the legislative and budgetary actions needed to implement the CLCPA, in response to the Final Scoping Plan (“Scoping Plan” or “Plan”), released in December.

The passage of the CLCPA was a major achievement. However, the CLCPA, as I will develop further below, sets out only general targets: its very structure assumes that state agencies and the Legislature itself will fill in the blanks through further legislation and regulations. And the Scoping Plan, issued by the Climate Action Council (CAC), while filled with dozens of positive recommendations for action, has many instances in which it acknowledges the need for further legislation and for budgetary appropriations. The Legislature must take up the challenge -- this year -- to make sure the critical goals of the CLCPA are achieved.

Our priority recommendations for legislation are outlined below: we place a particularly important emphasis on the need for strong enforcement efforts and significant state funding for climate transformation. And in Section VII of this testimony, we have made a few suggestions for how the Legislature can exercise its oversight role over state agencies and the administration.

II. Legislation is Needed to Ensure That the Greenhouse Gas Emissions Reduction Targets Are Enforceable, and to Establish a Plan Providing for Year-By-Year Reductions in Emissions by Sector and by Emissions Source

The CCLPA, among other things, requires significant reductions in emissions of greenhouse gases (“GHG”) by 2050 for all sectors of the state economy, including transportation, buildings and power plants, with specific renewable targets concerning the electricity provided to end users, including residents and businesses (the “GHG climate mandates”).³ Most significantly, the CLCPA says that GHG emissions must be reduced by 40% by 2030 (the “40 by 2030 target”) and 85% by 2050 and that net zero emissions must be achieved by the 2050 date (the “85 by 2050 target”).

It is critical to recognize that while the 40 by 30 and 85 by 2050 targets are admirable and achievable, *they are not self-enforcing*: it just sets broad targets for the economy rather than emissions caps for sources of GHG emissions in the state. As I said at May 13, 2021 oversight hearings held by several Assembly committees:

Most of the ... recommendations... [being considered for the Scoping Plan are] ... *suggestions* for actions by government and businesses... [I]f ...[a] business ... falls short by not adopting these CAC suggestions for best practices, or fails to sufficiently respond as projected to the economic incentives proposed, ... state enforcement agencies will have

³ Environmental Conservation Law (“ECL”) §75-0107; Public Service Law § 66-p.

little or no recourse to achieve [sic] he CLCPA targets. And I fear that the failure to achieve interim greenhouse gas emissions benchmarks will ultimately lead in future years to political pressure by industry to weaken the CLCPA.⁴

As she signaled in her State of the State message, the Governor almost certainly intends to propose a cap-and-invest system in the Executive Budget as the primary means of ensuring enforceability and a declining cap on emissions.⁵ Under the cap-and-invest scheme laid out in the Plan and the State of the State, the program will establish an annual cap on greenhouse gas emissions in the state, which will be reduced every year to meet the 40 by 2030 and 85 by 2050 targets. Large scale emitters of greenhouse gases and distributors of heating and transportation fuels will be required to purchase allowances via auctions conducted by the State reflecting the “emissions associated with their activities.”⁶

In the Scoping Plan, the CAC clearly recognized that the GHG climate mandates were not legally unenforceable without additional regulations and/or statutory changes. The Plan also recognized that there was no way to ensure that all of the CAC’s recommendations -- applicable to various business sectors like transportation and buildings -- will work in tandem to ensure that the GHG climate mandates were met. In comparing the merits of a carbon tax and a cap-and-invest system, the Plan says that:

[T]hey have one fundamental difference: while both... place a charge on emissions and invest the revenues, only a cap-and-invest program would implement a *declining, enforceable cap on emissions overall and a mechanism for State enforcement of such limits against individual sources, thus ensuring that aggregate emissions do not exceed the statewide emissions limits.*⁷

III. **Cap-and-Invest Has Enormous Potential to Achieve the Critical Purpose of Ensuring Declining Emissions Year-by-Year, With Appropriate Safeguards, But the Legislature Should Also Consider Regulatory Actions, Perhaps in Tandem With Cap-and-Invest**

Citizen Action believes that cap-and-invest has enormous promise as a means of ensuring we achieve the GHG climate mandates. However, cap-and-invest is not by any means

⁴ Testimony, Bob Cohen, Citizen Action of New York, Hearing on Climate Leadership and Community Protection Act (CLCPA) Implementation, held by Assembly Standing Committees on Environmental Conservation and Energy and Assembly Climate Change Working Group, May 13, 2021, at 3.

⁵ “Achieving the New York Dream” (2023 State of the State Book)(January 10, 2023), at 123-131 (“SOTS Book”), <https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSBook.pdf>.

⁶ *Id.*, at 123.

⁷ New York State Climate Action Council, “New York State Climate Action Council Scoping Plan” (December 2022), at 340 [emphasis added], <https://climate.ny.gov/-/media/project/climate/files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf> (“Scoping Plan”).

the only method that should be considered by the Legislature to cap emissions and enforce the GHG mandates. Specifically, the Legislature should consider as an alternative a system of regulatory enforcement of caps on emissions, or a combination of a regulatory system and cap-and-invest.

Our concern about the Legislature and the Governor putting all its eggs in the cap-and-invest basket is in part because there are significant variations in how a cap-and-invest program can be designed, and many of the details of the administration's proposal are not yet publicly known or fully fleshed out.⁸

We also have significant concerns based on the information that *is* available. First, the administration has signaled that some emitters will not be covered by its proposed cap-and-invest system: it appears that only "large-scale emitters" and distributors of heating and transportation fuels in the state will be required to purchase allowances for the emissions associated with their activities,⁹ leaving many polluters not subject to regulation under this system. Second, past cap-and-invest proposals have rightly been criticized on equity grounds, for example, for permitting offsets, thus exacerbating the concentration of pollution in low income communities and communities of color, and for not addressing the harms to such communities due to co-pollutants.¹⁰

The Legislature must in our view play a significant role in ensuring that when and if DEC issues regulations establishing a cap-and-invest system, that appropriate safeguards will be included. We recommend that any proposal from the administration include certain elements laid out by the NY Renews coalition, including, but not limited to: 1) rules to prevent or limit permit trading, and the banking of unused permits over a period of years; 2) mechanisms to ensure prioritization of GHG or co-pollutant reduction in disadvantaged communities; 3) equitably allocating funding generated by cap-and-trade system to assist workers impacted by our state's transition off fossil fuels; and 4) targeting relief to disadvantaged communities and low and moderate income consumers to alleviate potential increased energy burdens.¹¹ The Climate and Community Protection Fund proposal by NY Renews, discussed in Point V of this testimony,

⁸ Some of these details will presumably be filled in when the Governor issues her Executive Budget in the coming days, but others may not be revealed until the regulatory phase. DEC is not required to issue regulations to comply with the CLCPA emissions limits until January, 1 2024. ECL §75-0109(1).

⁹ SOTS Book, at 126.

¹⁰ As a NY Renews publication discusses, during the first three years of California's cap-and-trade system, co-pollutant emissions rose most in disadvantaged communities. NY Renews, "Addressing New York's Approach to Pollution Caps", (November 2022).

¹¹ *Id.*, at 343-344. Some of these elements are discussed in the Scoping Plan, but we recommend that the Legislature include the most important elements in statute.

provides a roadmap on how to spend the funds generated by cap-and-invest and other revenue programs.

Cap-and-invest must also be accompanied by strong enforcement mechanisms, such as those contained in the state of Washington’s Climate Commitment Act (“CCA”), signed into law by Governor Jay Inslee in 2021.¹² Under the CCA, if a covered entity does not purchase sufficient allowances or offsets, it is subject to significant penalties, including being forced to purchase additional allowances and ultimately to significant monetary penalties of up to \$10,000 a day.¹³

Without an assurance of strong protections against abuses of cap-and-trade such as I’ve just discussed, the Legislature should not adopt a cap-and-invest system, and instead consider a regulatory approach -- mandating year-by-year emissions caps by industry sector and for individual emitters. In appropriate cases, sales reduction targets for certain industries could also be established. The caps or targets could be set directly in statute, or alternatively, legislation could mandate a state agency to establish binding schedules by regulation. A model for the latter is the Gas Transition and Affordable Energy Act (S8198/A9399 in the 2021-22 session), sponsored last session by Senator Krueger and Assemblymember Fahy, which would require the setting of biennial gas sales reduction targets for each gas company in order to achieve the CLCPA reduction targets for this industry sector; this model could be extended to other industry sectors through legislation.

A final possibility is to have a hybrid of a regulatory system and cap-and-invest, for example, that provided statutory penalties to businesses that emit more than a set level for certain businesses not covered by cap-and-trade. The CLCPA already requires DEC to set by January 1, 2024 regulations to “ensure compliance with [the CLCPA’s]... statewide emissions reduction limits”, language that permits a regulatory system or cap-and-trade or both to be established.¹⁴ However, the CLCPA does not impose penalties on businesses that do not comply with any regulations mandated by the CLCPA.

We therefore recommend that the Legislature at a minimum pass in 2023 “placeholder” enforcement provisions providing for penalties for businesses that violate emissions limits

¹² The Grist, “Washington state just started capping carbon emissions. Here’s how it works” (January 9, 2023), <https://grist.org/economics/washington-state-cap-and-invest-california-lessons-it-works/>.

¹³ National Caucus of Environmental Legislators, “The Washington Climate Commitment Act: Policy Memo”, at 3-4, <https://www.nceleviro.org/app/uploads/2022/11/CE-WAs-CCA-Policy-Memo.pdf>.

¹⁴ ECL §75-0109(1). ECL §75-0109(2)(b) also provides that the GHG emissions limits in the CLCPA must be “legally enforceable.”

established by DEC or other state executive agencies,¹⁵ whether instituted as part of a regulatory system, cap-in-invest or a hybrid of the two. Further, the Attorney General, who has general authority to enforce the state’s laws through civil actions,¹⁶ and has significant capacity and expertise in environmental matters and a long history of aggressive environmental enforcement, should explicitly be given the statutory authority to enforce the state’s GHG emissions limits in addition to DEC. The penalties provided could mirror those provided under the Air Pollution Control Act, New York’s Clean Air Act. This should be coupled with ramping up the enforcement staff at DEC and perhaps other state agencies; DEC is almost certainly likely to need new enforcement funding in light of its significant new responsibilities not only in climate, but all in other areas, like water contamination.¹⁷

IV. The Legislature Must Generate Significant New Revenue this Year to Support Climate Transformation

It is undeniable that fully addressing the climate crisis and environmental injustice in New York also will cost tens of billions of dollars in private *and* public investments. While the costs of renewables like wind and solar and of energy efficiency measures have become in many cases cheaper than fossil fuel projects, it remains true that the massive transitions we must make to a clean energy economy cannot happen without significant investments by government to spur and complement private investments. Government was central to so many other past major transformations of the U.S. economy, positive and negative -- including the Internet, broadband, and the interstate highway system -- both through funding and regulatory changes. It’s clear that solving the climate crisis will be no different. And some necessary components of the transition to a renewable energy economy, like expansions in public transportation and establishing a strong electric vehicle (EV) charging infrastructure, simply cannot happen without significant governmental investments. The federal Inflation Reduction Act made an important start, but the state must increase its contributions as well: a CAC analysis found that it would take \$10 billion in investments each year to meet the state’s climate goals.¹⁸

¹⁵ Section 8 of the CLCPA explicitly authorizes and directs all state agencies (listing by name many of the critical agencies with responsibilities over industries that emit greenhouse gases, like the Public Service Commission and the Department of Transportation) to “promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits established” in the CLCPA.

¹⁶ See Executive Law §63(12).

¹⁷ See Comptroller Thomas P. DiNapoli, “Resources and Responsibilities: New York State’s Environmental Funding” (January 2021), <https://www.osc.state.ny.us/files/reports/pdf/new-york-state-environmental-funding.pdf>.

¹⁸ NY Renews Press Release, “Analysis shows urgent climate action would have significant economic benefits for NYS” (October 19, 2021), <https://www.nyrenews.org/news/2021/10/19/analysis-shows-urgent-climate-action-would-have-significant-economic-benefits-for-nysnbsp>.

While revenue from fines generated through a regulatory system capping GHG emissions or from cap-and-invest will certainly ultimately generate funding for New York’s climate initiatives, significant funding from these sources will not be available for several years. Further, funding from both cap-and-invest and a regulatory system or a combination of both is likely to be unreliable. In order to meet the goals in the CLCPA, we need to start ramping up *now*. Citizen Action recommends the following revenue proposals to fund climate transformation.

Invest in Our New York Bill Package

We support the Invest in Our New York (IONY) tax package, which collectively would raise over \$40 billion to support our state’s most urgent needs, including climate transformation. The package has five components: 1) extending and strengthening the 2021 corporate tax reforms (raising \$9 billion a year); 2) restructuring the personal income tax (PIT) to make the tax code more progressive and to raise revenue from the top 5% of earners in the state (raises \$15 billion a year); 3) creation of an “heirs tax” (raises \$8 billion a year); 4) changing of the tax treatment of the state capital gains tax (raises \$7 billion a year); and 5) establishment of a “mark-to-market Billionaires’ Tax” that taxes increases in the stocks and investment portfolios of high-income New Yorkers (raises \$1.7 billion a year). We are deeply disappointed that the Governor in her State of the State address declared that she was opposed to raising income taxes this year on the wealthy;¹⁹ we hope the Senate and the Assembly resist this misguided thinking.

Climate Change Superfund Act

We also strongly support the Climate Change Superfund Act, lead sponsored by Senator Krueger and Assemblymember Dinowitz (S9417/A10556),²⁰ which would create a “climate superfund” to reimburse communities for a small portion of the cost of damages that the state’s ten worst polluters have done to the climate. A 2022 federal report found that the damages caused by multiple severe storms and other severe weather events like floods in the 2000 to 2021 period cost our state between \$50 billion to \$100 billion, and up to \$20 billion in 2021 alone. The major oil companies that are the target of this important legislation not only played a major role in causing the harm, but for decades torpedoed solutions by hiding the truth about the climate crisis and countering the need to move away from using the products they marketed. Under the bill, these polluters, including major oil companies, would be forced to bear a proportionate share of

¹⁹ Here’s the link to the Governor’s State of the State remarks: <https://www.governor.ny.gov/news/remarks-prepared-governor-hochul-delivers-2023-state-state>.

²⁰ As many bills have not been reintroduced to date or given bill numbers for the 2023 session, for simplicity, we have retained in this testimony the 2022 bill numbers of carryover legislation as well as last year’s bill sponsors. Similarly, we are including in this testimony 2022 bill names -- even if we have been informed that the bill names will change.

the cost of infrastructure investments required to adapt to the impacts of climate change in New York State, like making defensive upgrades to roads, bridges and transit systems.

It is important to note that this bill primarily addresses climate *remediation* -- the past harms to our state due to climate change -- and therefore is not a substitute for generating other sources of funds to prevent future harms or to transition our state to renewables.

Fossil Fuel Subsidy Elimination Act

We also strongly support the Fossil Fuel Subsidy Elimination Act (S7438/A8483), sponsored in 2022 by Senator Krueger and Assemblymember Cahill,²¹ which eliminates over \$300 million in annual tax breaks provided by New York State to the fossil fuel industry, and limits the ability of fossil fuel companies to participate in several state economic development programs. Not only should we impose penalties on the oil companies that have created the mess we face, but it stands to reason that it is totally unacceptable for the state to continue to subsidize their activities.

V. Climate and Community Protection Fund and Climate Accountability Acts

It is not enough merely to raise money for climate: the Legislature and the Governor must set out a clear path for spending the money that is transparent and accountable, and wisely spends the money in a manner that ensures that the critical goals of the CLCPA, including the GHG climate mandates and the 40% “investment mandate” are met.²² Further, several changes need to be made to the operation of several state agencies to ensure that they can effectively implement the CLCPA. This is the purpose of two NY Renews-initiated bills to be introduced this session called the Climate and Community Protection Fund (“CCPF”), and the Climate Accountability Act (“CAA”).

Climate and Community Protection Fund

The CCPF, modelled on the Environmental Protection Fund²³ and other existing “special purpose” funds, would establish four dedicated funds in which revenues dedicated for climate action, including the revenue sources I’ve just discussed and other sources selected by the Legislature; we could, for example, dedicate a portion of Environmental Bond Act funding to the CCPF. The four dedicated funds would be devoted to: first, massively increase investments intended to move towards a renewable energy economy, including such items as transportation

²¹ As Kevin Cahill no longer serves in the Legislature, the bill will have a new Assembly sponsor in the 2023 session.

²² The CLCPA “investment mandate” provides that a minimum of 35% (with a goal of 40%) of funding for energy and related programs must benefit “disadvantaged communities.” See ECL §75-0117.

²³ State Finance Law § 92-s.

(i.e. electrification of school buses, mass transit) and the deployment of renewable energy; second, funding communities to determine their own solutions, like resilient local microgrids, new roofs and lead-abatement, and efforts to reduce heat islands; third, assisting workers losing their jobs and communities losing their tax base due to the energy transition ahead; and fourth, supporting low and moderate income New Yorkers and small businesses facing energy burdens.

Establishing dedicated funds would bring a measure of accountability to our climate funding: allowing the public, the Legislature and the Comptroller to more easily monitor how much is available in the fund year-by-year. A dedicated fund would also make it harder for the money to be repurposed for non-climate purposes in tight budget years, as has happened with other targeted state funding, like the Environmental Protection Fund.²⁴

Climate Accountability Act

Citizen Action also supports the Climate Accountability Act (CAA), legislation being prepared by NY Renews, which focuses on enhancing the ability of the New York State Energy Research and Development Authority (NYSERDA) to implement the CLCPA, and in particular the CLCPA provisions protecting “disadvantaged” communities (“DACs”). The bill includes specific requirements concerning matters like building and transportation decarbonization, and distributed energy resources like rooftop and community solar, that are intended to prioritize the needs of DACs. Further, the CAA contains an important provision I have already mentioned that would ensure the ability of DEC and the Attorney General to enforce the GHG emissions caps that must be promulgated by DEC by January 1, 2024.

VI. Other 2023 Citizen Action Priority Legislation

Citizen Action also strongly supports enactment of the following priority bills this session. All of them are directed at addressing GHG emissions and transition to renewables in particular segments of the economy. In enacting the bills discussed below, language revisions may be necessary to ensure that all of the new laws work seamlessly with the cap-and-invest and the regulatory systems I have already discussed.

²⁴ Commendably, the Legislature recently stopped attempts by the Governor to raid the Environmental Protection Fund.

Blueprint Bill and Gas Transition and Affordable Energy Act

Citizen Action strongly supports enactment this year of the Gas Transition and Affordable Energy Act (“gas transition act”) and the Fossil Fuel Facilities Replacement and Redevelopment Blueprint Act (the “blueprint bill”). The gas transition act would mandate that the Public Service Commission (PSC), together with the New York State Energy Research and Development Authority (NYSERDA), initiate one or more proceedings to develop a statewide plan to better align the PSC’s regulation of utility services with the CLCPA’s climate justice and GHG emission targets. The plan will set biennial gas sales reduction targets for each gas company, and, with the possibility of exemptions, prohibit any new gas plant the construction of which would lead to gas becoming available in new geographic areas from coming into service after September 30, 2023. Finally, the bill would remove certain provisions of existing law that are inconsistent with implementing the CLCPA, like the “100-foot rule.”

The blueprint bill (S8405/A9881), sponsored in 2022 by Senator Parker and Assemblymember Cusick,²⁵ would mandate that the Public Service Commission, Department of Environmental Conservation, and Long Island Power Authority establish proceedings, after a mandated state study, to phase out, replace and redevelop the state’s oldest and most polluting fossil fuel facilities by 2030.

We support both bills in particular because they would lead to the establishment of specific mandates on greenhouse gas sources, leading to required year-by-year reductions in sales in the case of the gas transition bill and the phase-out and ultimately shut-down of fossil fuel facilities in the case of the blueprint bill, thus directly promoting the achievement of the CLCPA emissions targets for the industries they regulate. Both fill in important gaps in the CLCPA, which, as I have previously stated, does not by itself ensure that its emissions reduction targets will be achieved. And, as I stated previously, the gas transition act could provide a model for more general legislation providing for a year-by-year transition away from fossil fuels covering multiple business sectors. The Scoping Plan in several instances calls for schedules to ramp down use of fossil fuels for various sectors, clearly acknowledging the need for statutory changes or further agency rulemaking -- the Legislature should take up this invitation.

²⁵ As Mr. Cusick no longer serves in the Legislature, a new sponsor is being selected for the bill for this session.

All-Electric Buildings

Citizen Action strongly supports the All-Electric Buildings Act (S6843/A8431),²⁶ sponsored by Senator Kavanagh and Assemblymember Gallagher, which would prohibit the granting of permits for the construction of buildings up to six stories that are not all-electric by December 31, 2023, and also the permitting of new buildings more than six stories that are not all-electric by July 1, 2027.

Electrifying buildings at the earliest possible moment is critical to New York addressing the climate crisis, and more specifically achieving the greenhouse gas emissions reduction targets in the CLCPA. As the buildings sector is the largest source of GHG emissions statewide, at 32%, we quite simply cannot implement the CLCPA without electrifying our state's over 6 million residential and commercial buildings. As a quick visit to a local appliance retailer or an internet search will tell you, non-fossil fuel appliances like induction stoves for cooking are widely available today. The Legislature must resist the efforts of the administration to delay implementation of our state's transition to all-electric new buildings, as set forth in last-minute changes to the implementation dates in the Scoping Plan.

Public Buildings

It is critical that New York prioritize decarbonizing state operations, including electrifying public buildings owned and operated by the state. Decarbonizing state operations can provide models for private parties to follow while helping to meet the state's climate goals.

Citizen Action strongly recommends that the State start with state-owned buildings in Albany itself, not only addressing the climate crisis but ending a long history of environmental racism by the State, including the placement of fossil fuel facilities and a trash-to-steam plant in an environmental justice community in Albany. In September of 2019, after years of opposition by local organizations, including SHARE (the Sheridan Hollow Alliance for Renewable Energy) and Citizen Action, the New York Power Authority (NYPA) and the Office of General Services (OGS) abandoned their plans to install two gas-fired turbines at state-owned facilities on Sheridan Avenue, that were intended to heat, cool, and provide electricity to the Capitol and Empire State Plaza (ESP). The agencies also commendably took some steps to lower the carbon footprint of the Capitol and ESP.²⁷

²⁶ We have been informed that the bill will be renamed the All-Electric New Buildings Act in the 2023 session.

²⁷ See SHARE Web Page Article, "Progress Toward Powering the Empire State Plaza with Renewable Energy" (February 13, 2022), <https://sharealbany.org/2022/02/13/progress-toward-powering-the-empire-state-plaza-with-renewable-energy/>.

However, Citizen Action and SHARE believe that NYPA and OGS have not gone far enough to address the historic harms to this environmental justice community. Instead, we are calling on the state to go further and operate area state buildings entirely on renewables. The Renewable Capitol Act (A9341/S8221), sponsored by Senator Breslin and Assemblymember McDonald,²⁸ would do just that. The bill mandates that several state facilities in downtown Albany, including the Empire State Plaza, the State Capitol building, the State Museum, and the Alfred E. Smith Building receive their electric power, and heating and cooling from 100% renewable energy within three years, after a planning process with local community input. Legislation should also be considered to expand the concept of the Renewable Capitol Act to state facilities owned or managed by the state in other cities.²⁹

Utility Intervention Legislation

We were extremely disappointed that Governor Hochul vetoed a bill (S3034, Parker/A873, Cahill) that passed both houses of the Legislature in 2022³⁰ to permit intervenors representing residential or small business utility customers to apply for reimbursement for participation in rate proceedings, rulemakings, investigations or other formal proceedings before the PSC. The impact of this legislation will be to reduce the rising cost of utility bills and provide utility customers and the non-profits that represent them with a more meaningful say concerning critical state policies in areas like climate that arise in PSC proceedings, and add an extremely necessary means of holding the agency accountable to the public.

Our experience at Citizen Action illustrates how ratepayer and climate interests are at present often outmatched by huge investor-owned utility companies in New York State. We recently participated in a proceeding to review a National Grid rate increase request for its upstate service territories that presented several important issues in addition to customer rates, including funding for the construction of a gas pipeline in the Capital District. Consumer and climate interests were represented by a few non-profits like ours which each were able to devote a small fraction of a single staffperson's time to the proceeding, along with an all-volunteer group from the Capital District, while the utility was able to assign large numbers of well-paid lawyers, engineers and other professional staff to the proceeding -- all paid for by ratepayer dollars. Sixteen states presently have laws authorizing utility intervenor funding.

²⁸ Assemblymember Fahy will become the lead sponsor of this critical legislation in the 2023 session.

²⁹ Here is a directory by the Office of General Services of state managed buildings: <https://ogs.ny.gov/real-estate/directory-ogs-managed-office-buildings>.

³⁰ Governor's Veto Memo No. 161.

We recommend that the Legislature, if it has not done so already, immediately initiate discussions with the Governor in an attempt to overcome her concerns and repass this critical legislation in 2023.

VII. Conclusion and the Legislature's Role in State Agency Implementation

While the focus of this hearing is necessary legislation, I would be remiss if I did not add in closing the importance of the Legislature strengthening its efforts to act as a strong “watchdog” over the administration’s implementation efforts, including through the budget process, and continuing to work closely with climate advocates in this role. This is particularly urgent now that the CAC has for the moment stopped meeting regularly, making public participation in the implementation much more difficult. Here are among the most important areas of concern.

First, the Legislature should in our view push the administration to issue guidance to state agencies as to the precise meaning of certain ambiguous or complex provisions of the CLCPA, and exactly what actions agencies should take to enforce these provisions. DEC has issued guidance as to its own activities, but the role of other state agencies is less clear. For example: 1) CLCPA Section 8 empowers multiple state agencies to contribute to the achievement of the GHG emissions limits; 2) CLPCA section 7(2) requires all state agencies to consider whether the permitting actions, contracts and other decisions the agency makes like permitting actions and the letting of contract will interfere with the state’s attainment of its GHG emissions goals; and 3) CLCPA section 7(3) provides that permits and contracts cannot disproportionately burden disadvantaged communities. My personal experience both as an advocate and a former state agency counsel teaches me that without guidance and aggressive oversight by the Governor and his or her executive staff, agency implementation of these provisions will be far less likely.

Second, central guidance and direction is necessary to ensure that state agencies will move towards decarbonizing their own internal operations, which in many instances do not need legislation.

Third, the Legislature -- in addition to passing the gas transition act, as we have already recommended -- needs to particularly examine the role of the Public Service Commission (PSC), which has seemed extremely reluctant to aggressively implement the CLCPA. One policy change that we have previously recommended is to -- either through PSC administrative actions or legislation -- strongly disfavor the resolution of policies that impact on achievement of the CLCPA GHG mandates through confidential rate proceedings. We have seen through our own experiences that in PSC proceedings, the needs of the climate can be traded against the myriad of other issues

considered in rate cases. Instead, these matters should be addressed in permit or in generic proceedings where the legal and policy issues can be considered on their own merits in public forums.

In closing, I once again thank you on behalf of Citizen Action of New York for the opportunity to offer our views on CLCPA implementation. Should any of your committees want more information on these issues, please feel free to contact me at bcohen@citizenactionny.org or at 518-265-6183.