



**Written Testimony of Christopher Casey  
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**Submitted to the Senate Standing Committees on Finance, Energy and  
Telecommunications, and Environmental Conservation**

**January 17, 2023**

Chair Krueger, Chair Parker, Chair Harekham, honorable members of the Committee: thank you for inviting me to comment on the budgetary and legislative actions necessary to implement the Climate Leadership and Community Protection Act and the Climate Action Council’s Final Scoping Plan.

My name is Christopher Casey, and I am a Senior Attorney for the Natural Resources Defense Council (NRDC), which is a member-based non-profit environmental organization with hundreds of thousands of members and online activists, including members and activists in New York State. NRDC works in the U.S. and internationally to protect the air, water, and land that support human health and long-term economic growth. It is founded and headquartered in New York and has a long-standing interest in environmental issues in the state, particularly with respect to energy policy. My work is centered on advancing climate and clean energy policy priorities in New York, with a focus on electric and gas utility matters that take place at the New York Public Service Commission (PSC), the New York Independent System Operator (NYISO), and the Federal Energy Regulatory Commission (FERC).

New York’s landmark Climate Leadership and Community Protection Act (Climate Act) set a new standard for state decarbonization policy. To meet its ambitious goals, the state must follow up with implementation policies that will create a just and orderly transition to clean energy in each sector of the economy. Removing statutory barriers to the transition of the gas system must be a top legislative priority this session.

**I. Summary of Testimony**

The most important action that the legislature can take this session to advance implementation of the Climate Act and Scoping Plan is to pass the New York Home Energy Affordable Transition Act (NY HEAT) (formerly, Gas Transition and Affordable Energy Act – S8198 (Krueger)/A9329 (Fahy)).

The Scoping Plan calls on the Legislature to “review and consider modifications to statutory provisions that may seem to be in conflict with the requirements of the Climate Act” and “bring them into alignment with the Climate Act to ensure that regulators and utilities do not have conflicting directives from the Legislature and have the clear authority required to take action

consistent with the State’s climate goals and requirements.”<sup>1</sup> In doing so, the Plan specifically identifies amending the Public Service Law provisions that establish a customer’s entitlement to gas service (i.e., the utility’s “obligation to serve” gas customers), the “100- foot rule” gas system extension subsidy, and other provisions that generally promote the growth of fossil gas infrastructure. Without those changes, both the equitable transition of buildings to zero-emission and a managed transition of the utility gas system that is most economic and beneficial for customers, and the state as a whole, will be impossible to deliver.

NY HEAT is foundational to achieving the Climate Act’s emission reduction and climate justice mandates in an equitable, affordable, and orderly way. It ensures that the laws and regulations governing New York’s electric and gas utilities support the state’s landmark climate law instead of working at cross purposes with it, and enables inclusive planning focused on equitable outcomes to manage the cost of rightsizing utility infrastructure while fostering certainty for utilities, a just transition for workers, and safe, comfortable, climate-friendly homes for all New Yorkers.

The NY HEAT Act:

- Empowers the Public Service Commission (PSC) to equitably achieve the Climate Act’s climate justice and emission reduction targets and makes doing so an express regulatory objective;
- Amends provisions of Public Service Law currently in tension with the Climate Act;
- Enables a strategic downsizing of the gas system by enabling community-scale solutions that facilitate the decommissioning of gas infrastructure; and
- Establishes several new requirements that will mitigate the cost of transitioning utility infrastructure consistent with the Climate Act mandates and protect vulnerable customers from disproportionately bearing the costs of a disorderly transition to clean energy, including that no one pays more than 6% of their income on their energy bills.

## **II. Achieving New York’s climate justice and emission reduction targets will require a dramatic reduction in fossil gas use, especially in the buildings sector**

Buildings are responsible for the largest share of greenhouse gas emissions in the state, accounting for approximately one-third of New York’s emissions.<sup>2</sup> Because our cold climate requires significant space heating, the older age of our building stock, and our large population, New York’s buildings also produce more toxic air pollution than any other state, which is why New York leads the nation in premature deaths caused by burning fossil fuels in buildings.

Most of New York’s building emissions come from burning fossil fuels onsite in residential and commercial buildings, primarily for space and water heating, and associated upstream emissions.<sup>3</sup> The dominant fuel used in buildings is fossil gas delivered via utility gas systems.

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<sup>1</sup> Scoping Plan at 354.

<sup>2</sup> *Id.* at 175.

<sup>3</sup> *Id.*

To meet its bold climate justice and emission reduction mandates, New York will need to drastically reduce fossil gas use, especially in our buildings and for generating electricity, which must be 100% zero emission by 2040. It will also need to strategically downsize the utility gas system as gas use shrinks to manage the long-run cost, affordability, and equity impacts of the gas system's transition. This poses a particular challenge for gas utilities because their regulatory framework and resulting business models are premised on expanding—not contracting—gas services.

It is critical that we begin planning the transition process now because the more gas infrastructure we build or replace today, the more expensive it will be to transition the gas system to be right-sized for achieving the Climate Act's climate justice and emission reduction mandates, and the greater the potential for customers, utilities, and/or taxpayers to be saddled with the expense of stranded assets that will not be in use after 2050.

Fortunately, the benefits from transforming in-building heating and hot water systems that currently rely on combustion of fossil fuels to clean, super-efficient systems using renewable electricity are tremendous. And making New York's buildings more efficient will make them more comfortable and affordable to operate. Electrified buildings can also be active participants in a two-way optimized clean electric system, providing responsive load and reducing the costs of building out the clean, resilient electric grid powering our buildings and transportation.

### **III. New York's gas utilities are investing billions of dollars each year to expand and fortify their gas system infrastructure, which is jeopardizing an equitable, affordable, and orderly clean energy transition**

New York's Public Service Law promotes and subsidizes the expansion of gas system infrastructure through provisions like the gas utility obligation to serve customers and the 100-foot rule. As a result, New York's gas utilities are investing billions in new gas infrastructure that perpetuates gas use and increases the cost of transitioning to clean energy.

For example, statutorily mandated utility system extension allowances (i.e., the 100-foot rule) require existing ratepayers to subsidize gas infrastructure hookups for new customers. According to a recent filing with the Public Service Commission, gas utilities have spent approximately \$1 billion over the last five years to expand gas system infrastructure to new customers.

New York's gas utilities are also spending billions of dollars each year to replace hundreds of miles of leak prone pipe with brand new pipe that is designed to remain in service for a hundred years. Leak prone pipe is old pipe at the end of its useful life that is made from brittle materials like cast or wrought iron or bare steel, which is prone to cracking and leaking when disturbed by digging, seasonal frost heave, or changes in ground water levels.<sup>4</sup> According to the Pipeline and Hazardous Materials Safety Administration (PHMSA), New York has the second most miles of leak prone pipe of any state in the country, with approximately 2,614 miles of cast or wrought

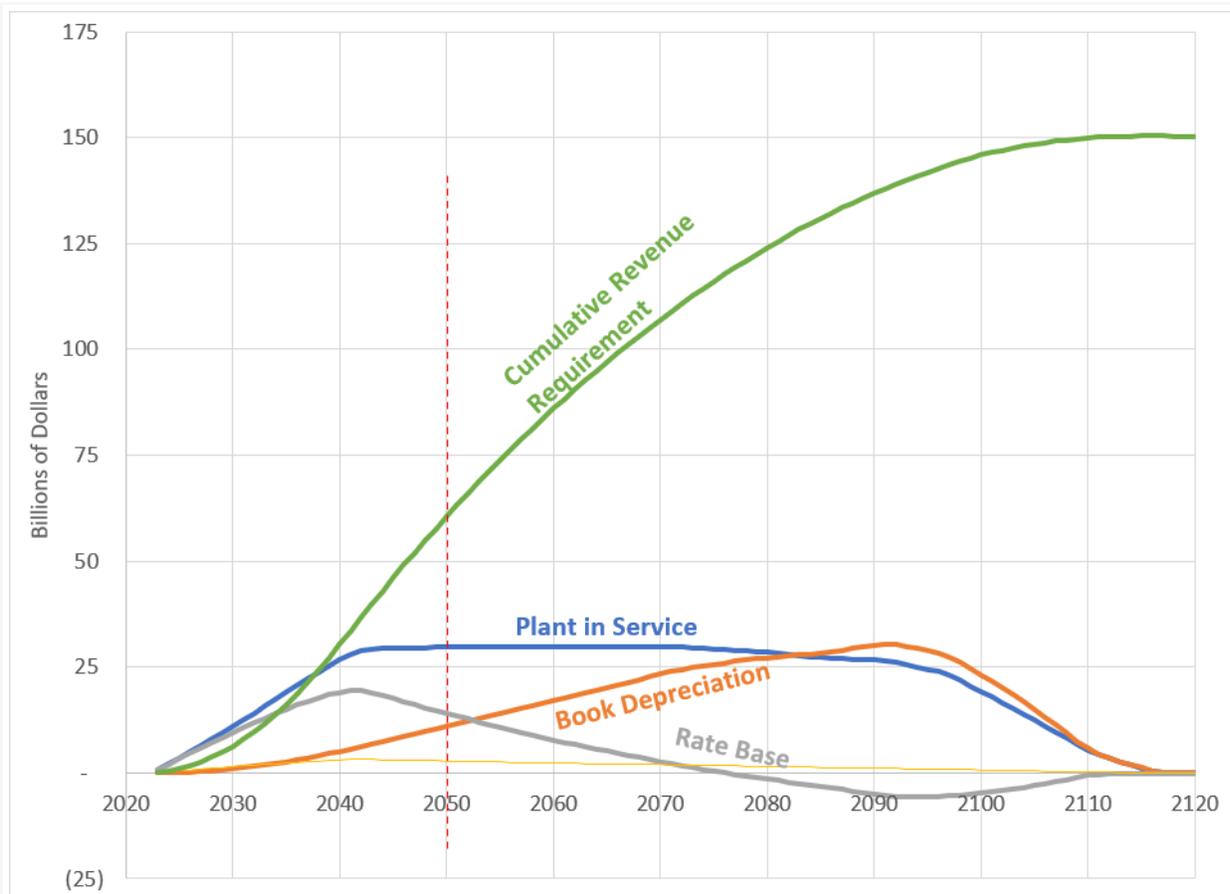
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<sup>4</sup> <https://www.phmsa.dot.gov/data-and-statistics/pipeline-replacement/cast-and-wrought-iron-inventory>.

iron leak prone pipe<sup>5</sup> and 4,523 miles of bare steel leak prone pipe.<sup>6</sup> While leak prone pipe is not necessarily actually leaking, the amount of New York’s gas system that is comprised of leak prone pipe carries implications for safety, reliability, and emissions.

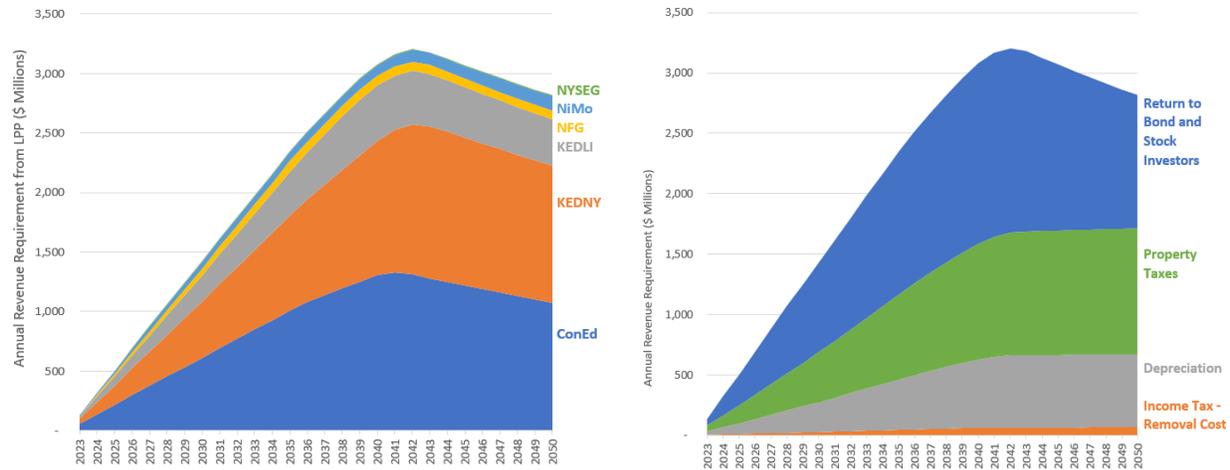
New York’s gas utilities are currently planning to replace all their leak prone pipe as fast as possible at enormous costs to gas customers. In recent years, leak prone pipe replacement has been the primary cost driver for gas utility rate increases. According to an analysis conducted by Synapse energy Economics (Synapse) on behalf of NRDC, New York gas customers are on pace to spend approximately \$150 billion to replace all the leak prone pipe in the state in the coming years. The costs of replacing this leak prone pipe with new pipe are at risk of becoming stranded, as \$77 billion of the \$150 billion is projected to be collected from customers after 2050. Replacing leak prone pipe can be avoided in many cases by strategically investing in neighborhood-scale decarbonization projects that facilitate decommissioning of segments of the gas system. Decommissioning, rather than replacing, leak prone pipe provides the best opportunity to manage costs while strategically downsizing utility gas systems.

*Synapse analysis of the cost to gas customers of replacing all the leak prone pipe in New York*



<sup>5</sup>[https://portal.phmsa.dot.gov/analytics/saw.dll?PortalPages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2FCI%20Miles%2FGD\\_Cast\\_Iron](https://portal.phmsa.dot.gov/analytics/saw.dll?PortalPages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2FCI%20Miles%2FGD_Cast_Iron).

<sup>6</sup> <https://portal.phmsa.dot.gov/analytics/saw.dll?PortalPages>.



**IV. The Scoping Plan calls for the PSC to plan for the strategic downsizing and decarbonization of gas utility systems**

According to the Scoping Plan: “All the information before the Climate Action Council indicates that achievement of the emission limits will entail a substantial reduction of fossil natural gas use and strategic downsizing and decarbonization of the gas system.”<sup>7</sup> The Plan’s integration analysis identified the vast majority of current fossil natural gas customers (residential, commercial, and industrial) will transition to electricity by 2050 and identified fossil gas use reductions statewide by at least 33% by 2030 and by 57% by 2035.<sup>8</sup>

The Scoping Plan thus calls for a well-planned and strategic downsizing of the gas system.<sup>9</sup> The Plan recommends that “New York State will need to implement an ongoing effort to plan for and manage the strategic downsizing and decarbonization of the gas system as the transition to greater electrification proceeds. That ongoing effort should include identification of strategic opportunities to retire existing pipelines as demand declines and exploration of the safest, most reliable, resilient, and least expensive approaches for an orderly transition.”<sup>10</sup> The Plan also recommends that this transition should “take place as quickly as possible and to the maximum extent possible and include the production, transmission, and distribution components of the system, while limiting negative impacts on the workforce.”<sup>11</sup>

The Scoping Plan acknowledges that the PSC has already taken important steps toward the decarbonization and strategic downsizing of the gas system by creating a framework for gas system planning; but it identifies that the PSC’s ability to direct gas utilities to implement effective planning for the strategic transition downsizing of the gas system is limited under current law.<sup>12</sup> In particular, the Plan highlights the gas utility “obligation to serve” in Public

<sup>7</sup> Scoping Plan at 350.

<sup>8</sup> *Id.*

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

<sup>10</sup> *Id.* at 351.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 354

Service Law § 30 and Transportation Corporations Law § 12 as in conflict with the Climate Act’s climate justice and emission reduction targets.<sup>13</sup> This “obligation to serve” effectively creates a legal entitlement for customers to fossil gas that is in conflict with the reduced gas consumption and strategic transition downsizing of the gas system necessary to achieve the Climate Act’s climate justice and emission reduction targets. Importantly, the legal entitlement to fossil gas service allows a single customer to block community-scale solutions for transitioning off fossil infrastructure.

The Plan also asserts that the “State should enact legislation to amend the Public Service Law and the Transportation Corporations Law to move away from promoting gas system expansion by marketing fossil natural gas to prospective customers or providing gas service lines and extensions of gas mains at no cost to new customers (such as the “100-foot rule”) aiming to ensure continued employment of displaced workers.”<sup>14</sup> Accordingly, current law both disempowers the PSC from effectively regulating for the strategic downsizing of the utility gas system and exacerbates emissions, pollution, and the cost of the transition by promoting and subsidizing the expansion of the gas utility system.

The Plan recommends that the State review and consider modifications to statutory provisions that may seem to conflict with the requirements of the Climate Act and “bring them into alignment with the Climate Act to ensure that regulators and utilities do not have conflicting directives from the Legislature and have the clear authority required to take action consistent with the State’s climate goals and requirements.”<sup>15</sup>

#### **V. NY HEAT harmonizes the laws governing utility service with the Climate Act to facilitate PSC regulation consistent with the Scoping Plan**

NY HEAT is foundational to achieving the Climate Act’s emission reduction and climate justice mandates in an equitable, affordable, and orderly way. It ensures that the laws and regulations governing New York’s electric and gas utilities support the state’s landmark climate law instead of working at cross purposes with it, and enables inclusive planning focused on equitable outcomes to manage the cost of right sizing utility infrastructure while fostering certainty for utilities, a just transition for workers, and safe, comfortable, climate-friendly homes for all New Yorkers.

The NY HEAT Act is consistent with, and enables implementation of, the Scoping Plan in several ways. First, it empowers the PSC to equitably achieve the Climate Act’s climate justice and emission reduction targets and makes doing so an express regulatory objective. Specifically, it amends the PSC’s general delegation of authority to not only include “all powers necessary or proper to enable it to carry out the purposes of [the Public Service Law]”, but also the climate

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<sup>13</sup> *Id.* at 354 (“For instance, existing Public Service Law states that it is ‘policy of this state that the continued provision of all or any part of such gas, electric and steam service to all residential customers without unreasonable qualifications or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest.’ Transportation Corporations Law § 12 also requires that gas and electricity service be supplied on application of a building owner or occupant.”).

<sup>14</sup> *Id.* at 357.

<sup>15</sup> *Id.* at 354

justice and emission reduction target in article seventy-five of the environmental conservation law, which are the core provisions of the Climate Act. It also makes the Climate Act's climate justice and emission reduction targets express public service responsibilities for which utilities shall plan for and carry out long-range programs to achieve.

Second, NY HEAT Act amends provisions of Public Service Law and Transportation Corporations Law currently in tension with the Climate Act to bring them into alignment with the Climate Act to ensure that regulators and utilities do not have conflicting directives from the Legislature and have the clear authority required to act consistent with the State's climate mandates. Specifically, it amends the gas utility obligation to serve and the 100-foot rule so that the PSC can do the planning for, and implementation of, the strategic downsizing and decarbonization of gas utility systems. Consistent with the Scoping Plan's recommendation, NY HEAT also directs the PSC to develop specific emission reduction targets (including interim targets) for gas utilities, which are necessary to guide gas system planning.<sup>16</sup> It further empowers the PSC to coordinate electric and gas system planning and selected solutions, even in instances where electric and gas service in a given area are provided by different utilities.

Third, NY HEAT Act empowers a strategic transition of utility infrastructure by enabling community-scale solutions that enable the decommissioning of gas infrastructure. The Scoping Plan provided that the effort to plan for and manage the downsizing of the gas system should include consideration of moving whole streets or neighborhoods at a time from gas infrastructure via community-scale solutions such as thermal energy networks.<sup>17</sup> It also provides that the PSC should require gas utilities to identify strategic opportunities to decommission existing leak prone pipe and that it should consider using non-pipeline alternatives in which funds for pipe replacement are instead used to speed the transition away from gas and the strategic decommissioning of these smaller branch pipelines that serve individual streets and neighborhoods.<sup>18</sup> NY HEAT accomplishes this by facilitating community-scale non-pipeline alternatives to fossil gas infrastructure projects through the amendment of the obligation to serve, which will prevent a single customer from being able to block a community-scale solution, and by directing the PSC to require gas utilities to pursue alternative solutions that minimize the replacement of leak-prone pipe while encouraging neighborhood-scale full building electrification, including through the installation of thermal energy networks, that results in the decommissioning of segments of the gas system.

Fourth, NY HEAT contains several new requirements that will mitigate the cost of transitioning utility infrastructure consistent with the Climate Act mandates and protect vulnerable customers from disproportionately bearing the costs of a disorderly transition to clean energy, including that no one pays more than 6% of their income on their energy bills.

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<sup>16</sup> *See id.* at 357.

<sup>17</sup> *Id.* at 351.

<sup>18</sup> *See id.* at 358-359.

## **VI. The fossil industry is spending massive sums on misinformation and lies to undermine the Climate Act and the Scoping Plan**

While there is enormous work ahead to transform the gas system and decarbonize New York's buildings, it is being hampered by the vested business interests that extract and transport the fossil fuels that must be phased out. The New York Times reported earlier this month that the Propane Education and Research Council has spent almost a million dollars opposing the transition to climate friendly buildings in New York per the Climate Act and Scoping Plan.<sup>19</sup> In an ironic twist, while energy prices climb this winter, fossil fuel bills are even higher because the funds use to promote these polluting fossil fuels comes from fees levied on current propane and gas customers and are meant to benefit customers by being used for research and safety, not spread misinformation.

Similarly, the fossil fuel front group "New Yorkers for Affordable Energy" has paid for attack ads against several important bills, including last session's version of NY HEAT and the All-Electric Heat in New Construction bill. New Yorkers for Affordable Energy is comprised of a broad swath of fossil fuel interests, including the gas utilities National Grid, Avangrid, Central Hudson, and National Fuel Gas, and it receives financial support from other major gas industry interests, such as the American Petroleum Institute, Williams Companies, and Millennium Pipeline.<sup>20</sup> The gas utilities National Grid and National Fuel Gas are on the front group's steering committee.<sup>21</sup> According to its IRS filings, the front group's business purpose is "to expand natural gas service." It has spent hundreds of thousands of dollars, to mislead New Yorkers about the energy transition and make false claims about the costs and technologies of decarbonizing buildings and energy systems.<sup>22</sup>

New York cannot allow the oil and gas industry, under the guise of front-groups, to undermine efforts and investments that address climate change.

## **VII. Conclusion**

NY HEAT is foundational to achieving the Climate Act's emission reduction and climate justice mandates in an equitable, affordable, and orderly way. It ensures that the laws and regulations governing New York's electric and gas utilities support the state's landmark climate law instead of working at cross purposes with it, and enables inclusive planning focused on equitable outcomes to manage the cost of rightsizing utility infrastructure while fostering certainty for utilities, a just transition for workers, and safe, comfortable, climate-friendly homes for all New Yorkers.

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<sup>19</sup> <https://www.nytimes.com/2023/01/11/climate/climate-propane-influence-campaign.html>.

<sup>20</sup> <https://www.energyandpolicy.org/new-yorkers-for-affordable-energy/>.

<sup>21</sup> <https://www.ny4affordableenergy.com/ourcoalition/>.

<sup>22</sup> <https://www.gothamgazette.com/130-opinion/11757-fossil-fuel-front-group-new-york-climate-progress>.

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