



**Comments before the New York State Senate Joint Committee hearing to examine the legislative and budgetary actions necessary to implement the Climate Action Council Scoping Plan**  
January 19, 2023

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EDF is a leading international nonprofit organization, that seeks to create transformational solutions to the most serious environmental problems. EDF links science, economics, law, and innovative private-sector partnerships. Headquartered in New York City and with offices in the United States, China, Mexico, the United Kingdom and Indonesia, EDF's 750 scientists, economists, attorneys – alongside key partners and allies – work in 26 countries to turn our solutions into action.

The Climate Action Council (“Council”)’s Scoping Plan represents a critical step in defining New York’s path to achieve the objectives of the Climate Leadership and Community Protection Act (“CLCPA”).<sup>1</sup> The Scoping Plan is a foundational document defining how New York will equitably meet its greenhouse gas emission reduction goals under the law. This will ensure a coordinated statewide scheme consistent with the holistic, whole-of-government approach to decarbonization contemplated by the CLCPA. The CLCPA requires that the Scoping Plan “shall identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits.”<sup>2</sup> The Scoping Plan is meant to provide necessary direction to state agencies, which are required in all “administrative approvals and decisions” to “consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits,” to “prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities,” and to “not disproportionately burden disadvantaged communities.”<sup>3</sup> And the Scoping Plan will provide necessary direction to ensure that state agencies comply with the statutory directive that they “shall promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits.”<sup>4</sup>

In these comments, EDF addresses four topics on which we are actively engaged. Section II of these comments discusses the electrification of trucks and buses, covered in Scoping Plan Chapter 11 (Transportation) and Chapter 13 (Electricity); Section III discusses market-based solutions, covered in Chapter 17 (Economywide Strategies); Section IV

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<sup>1</sup> New York State Climate Leadership and Community Protection Act (“CLCPA”), 2019 N.Y. Laws 106.

<sup>2</sup> *Id.* §2.

<sup>3</sup> *Id.* §7(2)–(3).

<sup>4</sup> *Id.* §8.

discusses the natural gas sector as covered in Chapter 18 (Gas System Transition); and Section V discusses adaptation and resilience, covered in Chapter 21 (Adaptation and Resilience) and Appendix H (Adaptation and Resilience Strategy Components). In each of these issue areas, New York has an opportunity to lead, but significant action is required of state and local governments as well as private actors to achieve the critical climate, environment, and equity goals established in the CLCPA. EDF recognizes the state has the regulatory authority to pursue many of the Scoping Plan's proposed policies, but there are limits to that authority where legislation will be required to achieve the CLCPA's climate and equity goals. These comments should not be interpreted as a position on what actions considered in the Scoping Plan may or may not require additional legislative action. Rather, EDF submits these comments before the Committee in order to clearly outline our positions and priorities related to the four key issues mentioned above. We would be glad to provide additional information to the Committee if requested.

### **Medium- and Heavy-Duty Electrification**

Since mid-2020, New York has enacted numerous policies meant to accelerate the deployment of electric medium- and heavy-duty vehicles (MHDVs) in New York. This includes being a signatory on the multi-state memorandum of understanding on zero-emission MHDVs,<sup>5</sup> a state law setting targets for zero-emission MHDV sales and deployment,<sup>6</sup> DEC's Advanced Clean Trucks (ACT) Rule setting mandatory zero-emission MHDV sales requirements,<sup>7</sup> and the statutory zero-emission school bus requirement.<sup>8</sup> To date, however, the Public Service Commission (PSC) has not been moved to ensure the existence of charging infrastructure sufficient to support the achievement of these policies, particularly the near-term requirements of the ACT Rule.

The omission is striking; although the ACT Rule can reasonably be expected to cause scores of trucks, including the heaviest Class 8 trucks, to begin hitting New York roads as early as 2024, the PSC has taken no action to scale electric infrastructure roll-out to match the expected truck and bus deployments.<sup>9</sup> This gap persists despite CLCPA language that appears designed to direct agencies take appropriate actions to support one another's

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<sup>5</sup> Multi-State Medium- and Heavy-Duty Zero Emission Vehicle Memorandum of Understanding (July 14, 2020), available at <https://www.nescaum.org/documents/multistate-truck-zev-governors-mou-20200714.pdf>; see also NESCAUM Welcomes Nevada's Participation in the Multi-State Zero-Emission Electric Trucks Initiative, available at <https://www.nescaum.org/documents/nescaum-welcomes-nevada-s-participation-in-the-multi-state-zero-emission-electric-trucks-initiative/nescaum-welcomes-nevada-s-participation-in-the-multi-state-zero-emission-electric-trucks-initiative#>.

<sup>6</sup> A4302, 2021-2022 Leg., Reg. Sess. (N.Y. 2021); see also Press Release, In Advance of Climate Week 2021, Governor Hochul Announces New Actions to Make New York's Transportation Sector Greener, Reduce Climate-Altering Emissions (Sep. 8, 2021), available at <https://www.governor.ny.gov/news/advance-climate-week-2021-governor-hochul-announces-new-actions-make-new-yorks-transportation>.

<sup>7</sup> Medium- and Heavy- Duty Zero Emission Truck Annual Sales Requirements and Large Entity Reporting, 44 N.Y. Reg. 8 (Jan. 19, 2022).

<sup>8</sup> See Rachel Silberstein, *New York Schools Have Five Years to Begin Electric Bus Conversion*, Albany Times Union (Apr. 13, 2022), available at <https://www.timesunion.com/news/article/New-York-schools-have-five-years-to-begin-17072485.php>.

<sup>9</sup> The PSC did take limited action in the form of its MHDV make-ready infrastructure pilot program (Case 18-E-0138, issued July 16, 2020), but that action is not scaled to match the vehicular regulation that has since been adopted – and due to eligibility barriers that leave nearly 96% of potential customers ineligible, the program has gone almost completely unused.

decarbonization efforts and to refrain from actions that will interfere with meeting climate goals.<sup>10</sup>

Recent actions show some headway is being made on this issue. The newly adopted Scoping Plan, which agencies may look to for more concrete direction on their long-term obligations, calls for prudent investment in supporting charging infrastructure. And in her recent 2023 State of the State, Governor Hochul committed to directing the PSC to initiate “a proceeding that will identify and remove the barriers to the efficient and timely deployment of the charging infrastructure needed to electrify New York’s medium and heavy duty vehicles.”<sup>11</sup> But it is not certain that these actions will assure *timely* Commission action in this area, action that is synchronized with the vehicle mandates already in place—and without such timely action by the Commission, achievement of the ACT Rule’s goals and the resulting emissions reductions benefits will be put at risk.

Charging infrastructure for trucks and buses is desperately needed—not only to achieve climate goals but to reduce public health harms, as these vehicles are responsible for disproportionate amounts of local air pollution. Air pollution associated with diesel trucks and buses is particularly harmful to those living in disadvantaged communities, many of which are in or near the commercial areas, main roads, and freight corridors where trucks and buses operate. Federal legislation adopted over the past year, namely the Infrastructure, Investment, and Jobs Act and the Inflation Reduction Act, has provided funding for deployment of electric vehicles and public charging infrastructure. But these federal programs do not provide sufficient support for charging infrastructure at depots, infrastructure that most commercial EVs are expected to rely on. The PSC has similarly focused on public charging infrastructure while neglecting the depot charging need. Given this, EDF recommends the following legislative and budgetary actions to address near-term needs for alignment of PSC action on MHDV electrification with the requirements of the CLCPA:

- Legislation directing the PSC to initiate, by a date certain, a proceeding to address the grid forecasting, planning, infrastructure as well as charging deployment needs associated with the electrification of MHDVs, and, by a further date certain, to issue orders that lay the foundation for properly scaled and timely charging infrastructure deployment with underlying grid forecasting, planning, and infrastructure to support MHDV electrification in NY.
- A budget allocation of up to \$1 million to be used for hiring by the executive branch and relevant agencies of an ombudsperson and outside support to oversee coordination among agencies responsible for infrastructure roll-outs, including without limitation the Public Service Commission and the Department of Transportation, to ensure that infrastructure to serve the realistic operational needs of zero-emission MHDVs is in place on a timeframe that supports achievement of relevant zero-emission vehicle policies, including without limitation the Model Year 2025 and 2026 requirements promulgated as part of the ACT Rule.

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<sup>10</sup> Climate Leadership and Community Protection Act §8, 2019 N.Y. Laws 106.

<sup>11</sup> Achieving the New York Dream: 2023 State of the State, at 136, *available at* <https://www.governor.ny.gov/sites/default/files/2023-01/2023SOTSBook.pdf>.

By taking these actions, state lawmakers can jumpstart the deployment of charging infrastructure for trucks and buses in a way that mitigates the harms of today's polluting trucks and buses, while setting the State on a path to prepare for the long-term needs of an electrified MHDV sector.

### **Economywide Strategies**

EDF has worked on policies that limit economywide pollution for decades across dozens of states and countries. Through that experience and associated research, EDF has found that economywide policies – in particular, economywide emissions caps like those established by a cap-and-invest program – are critical for meeting ambitious emission reduction targets. To that end, inclusion of an economywide emissions reduction program in New York is critical to “ensur[ing] the attainment of the statewide greenhouse gas emissions limits established”<sup>12</sup> in the CLCPA.

Any economywide emissions backstop program must be designed to ensure benefits in disadvantaged communities (DACs) and protect DACs from ongoing pollution impacts, which will require extensive and ongoing community input. In addition, even a well-designed cap-and-invest program is not a substitute for targeted or sector-specific policies offering no-regrets opportunities to drive decarbonization shifts or create local health benefits, especially in DACs. As the State considers a wide range of sector-specific decarbonization strategies, the inclusion of an economywide program, as part of a suite of climate policies, is a necessary piece of the climate policy puzzle as it offers several significant and specific advantages sector-specific programs do not.

EDF supports the Scoping Plan's finding that there is a need for “a comprehensive policy that supports the achievement of the requirements and goals of the Climate Act, including ensuring that the Climate Act's emission limits are met.”<sup>13</sup> Furthermore, EDF supports the Scoping Plan's emphasis on cap-and-invest as the chosen economywide policy.

### **Why New York Needs a Cap-and-invest Program**

A cap-and-invest program is critical to meeting New York's climate goals because it would:

1. Establish a firm legal limit on emissions, significantly increasing the certainty that the state's GHG and co-pollutant targets will be met by creating a strong backstop—something that other policies targeting technological change through subsidies, incentives, or other means cannot achieve on their own.
2. Raise revenue to mitigate any cost increases for consumers through rebates and to invest in other policies to reduce emissions, such as grant programs to drive the adoption of zero-emission technologies. These investments can be targeted to address racial, social, and economic injustice through targeting co-pollutant reductions, job creation, and economic development in DACs.

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<sup>12</sup> N.Y. ECL §75-0103.

<sup>13</sup> New York State Climate Action Council. 2022. “New York State Climate Action Council Scoping Plan.” [climate.ny.gov/ScopingPlan](https://climate.ny.gov/ScopingPlan); p. 339.

3. Support, complement, and amplify all other policies to reduce emissions and support the transition to a clean energy economy.
4. Deliver greater cumulative emission reductions by accelerating near-term abatement, mitigating New York's contribution to long-term climate impacts.

### Achieving Needed Emissions Reductions

An economywide cap on emissions significantly increases certainty of hitting reduction targets by establishing a binding, declining emissions limit across all major sources of climate pollution. Under this policy scenario, the state would set an annual, progressively declining limit on GHG emissions across all major emitting sectors consistent with the targets established in the Climate Act. New York already has significant experience with these types of programs through its participation in the Regional Greenhouse Gas Initiative, which limits emissions from power plants across twelve states in the Eastern U.S. As with RGGI for the power sector, an economywide cap would establish a backstop on annual emissions, thereby greatly increasing the certainty of *overall* emission reductions. As a result, a cap-and-invest program can also help secure and maximize *cumulative* GHG emission reductions, which is critical for reducing the overall extent of climate impacts.

A cap-and-invest program would exist alongside and complement other emission reduction programs. As the Final Scoping Plan states, economywide policies “support clean technology market development and send a consistent market signal across all economic sectors that yields the necessary emission reductions as individuals and businesses make decisions that reduce their emissions.” This would help secure lowest-cost emission reductions first and achieve earlier and deeper reductions than could be achieved without the program.

### Ensuring Environmental Justice Priorities Are Met

Any climate policy or program being considered by the State of New York, including economywide policies, can and must be designed to ensure beneficial outcomes for DACs. While programs designed to reduce GHG emissions frequently have significant positive impacts on reductions of the local pollutants that have severe impacts on public health,<sup>14</sup> additional protections are necessary to ensure that policies do not perpetuate disproportionate impacts experienced by DACs and achieve significant positive impacts.

These considerations are important for evaluating all climate policies, but particularly so for economywide policies designed to deliver aggregate emission reductions and provide compliance flexibility to reduce the cost of decarbonization and increase ambition. Most economywide caps have been established as part of *cap-and-invest* or *cap-and-trade* programs, which limit total climate pollution by requiring regulated entities to hold emission credits equal to their total GHG pollution for a given year, and typically include emission credit auctions where regulated entities purchase credits from the state, as well as opportunities for trading those credits.<sup>15</sup>

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<sup>14</sup> See Environmental Defense Fund, *How Are Our Air and Climate Connected?*, available at <https://www.edf.org/health/how-are-our-air-and-climate-connected>.

<sup>15</sup> See [https://media.rff.org/documents/Rpt\\_19-01\\_Oregon.pdf](https://media.rff.org/documents/Rpt_19-01_Oregon.pdf) and <https://www.rff.org/publications/working-papers/lessons-learned-from-three-decades-of-experience-with-cap-and-trade/>

To ensure pollution reductions in DACs, sources directly contributing to disproportionate pollution burdens should be subject to additional requirements and those requirements should be designed to reduce harmful pollution in DACs. The Scoping Plan includes an initial discussion of policy provisions to ensure air quality protections in DACs under a NY cap-and-invest policy, such as limits on trading, source-specific caps, targeted air quality monitoring, and limits on the use of offsets.<sup>16</sup> EDF agrees with the Scoping Plan recommendation that the State, in consultation with DAC representatives, should evaluate such programs further, and that provisions shown to reduce the risk of adverse impacts in DACs must be included in any final cap-and-invest program.

### Revenue Generation and Allocation

Cap-and-invest policies have the potential to generate significant public revenue through the sale of allowances at auction. This revenue can be invested in a variety of actions to cut emissions, making it cheaper for consumers and businesses to comply with the cap-and-invest policy. This revenue can also be used to address racial, social, and economic injustice through targeting co-pollutant reductions, job creation, and economic development in DACs.

In designing and implementing investment policies, EDF recommends that New York develops a system for recommending investment priorities and evaluating investment successes that centers those New York communities that could stand to benefit the most from these programs, prioritizing DACs and workers that may be economically displaced by the transition to a low-carbon economy.

### Gas System Transition

The Final Scoping Plan correctly acknowledges that the natural gas distribution system—which was designed to deliver natural gas and intended to expand to continuously serve new customers—is unlikely to fit New York’s future energy needs. The Plan states that “[e]lectrification of space and water heating with high efficiency heat pumps is a viable approach to decarbonizing operations for nearly all types of buildings in New York.”<sup>17</sup> Accordingly, the “existing gas system . . . will need to be strategically downsized” as “the vast majority of current fossil natural gas customers (residential, commercial, and industrial) will transition to electricity by 2050.”<sup>18</sup>

Achieving this transition will require comprehensive planning and investment and legislation is necessary to achieve important goals. The Scoping Plan identifies limits to current PSC law that establishes the Public Service Commission’s obligation to serve and promote the expansion of the natural gas system.

Page 354 of the Scoping Plan says, “There are, however, limits to the action the PSC as regulator of gas utilities can take toward this transition under current law. 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

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<sup>16</sup> New York State Climate Action Council. 2022. “New York State Climate Action Council Scoping Plan.” [climate.ny.gov/ScopingPlan](https://climate.ny.gov/ScopingPlan); p. 343, p. 345.

<sup>17</sup> Scoping Plan at 176.

<sup>18</sup> Scoping Plan at 350.

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.”

Page 357 of the Scoping Plan goes on to say, “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. As soon as possible, the legislation should eliminate the existing requirement that gas service be supplied on application of a building owner or occupant and have each utility regularly file a proposal for how it will meet the State’s emission-free by 2040 (100x40) electricity generation requirement and 2030 and 2050 emissions limits within its customer base.”

Senate Bill Number 2016, a bill to amend the public service law and the transportation corporations law, in relation to aligning utility regulation with state climate justice and emissions reductions targets, has been introduced and referred to committee. EDF supports this legislation and looks forward to working with the Senate to ensure its passage and adoption.

### **Adaptation and Resilience**

With the implementation of the Climate Leadership and Community Protection Act of 2019, New York State has established itself as a leader with a clear structure for reducing greenhouse gases in the state. With rising seas and rising risks, we also need strong leadership and governance to reduce the climate impacts we face regardless. Hurricanes Ida and Sandy made it abundantly clear that we are already experiencing these impacts today. We encourage the administration and the legislature to establish equivalent leadership for taking on the challenges of these impacts through the designation of a Chief Resilience Officer within the Governor’s Office to lead the development of a statewide resilience plan through a whole of government approach plan. The Environmental Defense Fund recently published [a report](#) on how chief resilience officers can help address growing climate impacts that details different models and opportunities for success. With increased federal and state resilience dollars from the passage of the Inflation Reduction Act and New York States’ Clean Water, Clean Air and Green Jobs Bond Act, it is important that we have a strategy in place.

EDF has worked with states from Louisiana to New Jersey, and we would be happy to share best practices gleaned from this work and share models, successes, and challenges in pursuing state plans.