



# SIERRA CLUB

## ATLANTIC CHAPTER

### **Legislative Hearing on the Legislative and Budgetary Actions Needed to Implement the Scoping Plan And CLCPA**

**Senate Committee on Finance**

**Senate Committee on Environmental Conservation**

**Senate Committee on Energy and Telecommunications**

**Albany, New York Thursday, January 19, 2023**

**10:00 A.M.**

My Name is Robert Ciesielski. For the past 10 years I have been the chair of the Sierra Club Atlantic Chapter's Energy Committee. I represent a volunteer-led organization of more than 46,000 members statewide committed to protecting New York's air, water and remaining wild places. We wish to thank the Chairs Krueger, Harckham, and Parker for holding this hearing on the legislative and budgetary actions needed to implement the Scoping Plan and the Climate Leadership and Community Protection Act (CLCPA).

Any discussion about the legislature's further obligations to advance the goals of the CLCPA in light of the recently released scoping plan must first be grounded in the irrefutable facts of the climate crisis and acceptance that there are significant economic and social costs to inaction and the status quo. The Legislature should be commended for passing a nation-leading climate law in 2019, but there is still much that needs to be enacted and funded to ensure that the State of New York does its part to stave off the worst of future storms, floods, droughts, heatwaves, mass extinctions and public health emergencies.

In general, the Sierra Club broadly supports the recommendations of the Climate Action Council in their final Scoping Plan. An enormous amount of work went into developing this guidance document, beginning with the efforts of the sector-specific panels, which reflects the input and expertise of a large number of stakeholders and experts. Significantly, the final scoping plan confronts many of the most contentious issues head on and comes to some practical, and in many cases the only viable conclusions for how we are to proceed in developing an equitable and zero emissions economy. In particular, the Final Scoping Plan appropriately limits the role for new fossil fuels in the electric, transportation and building sectors, confining use of gas and oil to last resort situations of absolute need. As New York continues to meet its renewable energy goals, it should leverage the use of regulations and transparent resource planning processes to ensure the fossil fuel plant replacement and retirement processes are effectively implemented, and "exceptions to the rule" are minimized. The vast majority of technological solutions recommended for the building, electric and transportation sectors also appropriately focus on

electrification over the use of hydrogen and “renewable” natural gas, which in most cases is the only workable pathway to deep decarbonization.

The Sierra Club was, however, disheartened but unsurprised that interests, largely within or funded by the fossil fuel industry, have been spreading concern and misinformation about the implications of the Final Scoping Plan. Not only is it critical that the Climate Action Council and the Legislature not capitulate to this fossil fuel industry pressure—which is based in fear and not fact—but also that the State focus resources on educating the public about the need for the emission limits in the Climate Act, the actual recommendations of the Council, and the fact that the Just Transition Working Group found that implementing the recommendations in the Scoping Plan will be a major catalyst of job and economic *growth* in New York State.

For the purposes of this hearing the Sierra Club will focus on some key areas where the legislature must pass new laws and expend state funds to keep the implementation of the CLCPA on track:

**No new fossil fuel electric generation:** The Scoping Plan outlines a prudent path for transitioning away from the present dependence on fossil fuels in the electric sector by narrowing the potential for new fossil fuel generation and establishing a process for phasing down emissions from and ensuring reliability after retiring existing fossil fuel plants. The legal structure for such a plan can be found in the 2022 “Clean Futures Act,” S.5939 (Ramos) /A.6761 (Mamdani), that would prohibit the Public Service Commission and the Department of Environmental Conservation from permitting any new power generation facility powered in whole or in part by fossil fuels. This legislation comes with a narrow reliability safety valve that lays out the conditions in which a plant’s permit could be considered, were there truly a demonstrated need that could not be met in a reasonable time frame by any combination of clean renewable energy, battery storage, transmission, or demand response. This bill, and this CAC recommendation, would simply flip the default, from fossil fuels as the first choice for providing power in the state to the last choice. The Sierra Club urges the legislature to codify the new fossil fuel generation ban to send a clear signal to energy developers still intent upon building new gas plants up until the year 2040.

**No regressive changes to legal definitions:** The legislature must not yield to fossil fuel interest pressure to weaken the meaning of “zero emissions” in current law by expanding definitions to include the combustion of wastes, hydrogen or RNG, or small scale nuclear power. Achieving a truly zero emitting electric sector by 2040 is critical to the decarbonization of multiple other sectors of the economy including transportation and buildings, which themselves will be shedding fossil fuels to rely on a decarbonized grid.

**All Electric Buildings by 2024:** Two years ago, NYC enacted a law banning gas hookups in new buildings, effectively requiring all-electric heating and cooking for all construction moving forward, which takes effect in December 2023 for buildings under seven stories; and until 2027

for taller buildings. The ‘All-Electric Buildings Act,’ S.562-A (Kavanagh)/A.92-A (Gallagher) would expand this ban to the entire state. Specifically, the ‘All-Electric Buildings Act’ would:

- After 2024, prohibit cities, towns, and villages from issuing a permit for the construction of any new commercial, residential, or mixed-use mixed fuel building, except when such all-electric building is proven to be infeasible.
- Require state agencies to identify policies to ensure affordable electricity for all-electric buildings. In addition, we anticipate that the Governor will offer Article VII language in her FY 2024 executive budget establishing both an “all-electric” date and potentially a 2030 date by which gas and oil furnaces will no longer be sold in NY.

**Synchronize Public Service Law with the CLCPA and remove incentives and entitlements for fossil fuels:** If there are obstacles to New York State meeting mandates for all-electric buildings, those potential shortfalls are rooted in an entanglement of existing laws and regulations that continue to prop up the use of fossil fuels at the expense of alternatives. While our climate laws are binding, our public service laws have lagged behind, in many cases subsidizing and prioritizing the continued use of the same fossil fuels we must eventually ban. Currently, gas companies are spending billions of dollars to build out gas infrastructure in New York and utilities are working to get more new homes hooked up to fossil fuels before the anticipated climate regulations in 2024 mandate all-electric heat pumps and appliances. The Public Service Commission does not have the legal authority to fully stop this surge and utilities still maintain a legal “obligation to serve” any customer demanding gas service. The Sierra Club urges the legislature to pass the ‘Gas Transition and Affordable Energy Act,’ S.8198 (Krueger)/A.9329 (Fahy) (2022), a bill that will authorize the Public Service Commission to align a planned phaseout of gas and oil home heating with anticipated new codes and regulations to facilitate an equitable and affordable transition to all-electric, renewable energy powered buildings.

**Fund more EV Charging Infrastructure, rebates and progressive sales models to drive innovation:** As automakers increasingly move toward a direct sales model, particularly for electric vehicles, it is imperative that the legislature act upon the Final Scoping Plan’s recommendations for eliminating all constraints on direct vehicle sales in New York and enable the State to achieve its zero emission vehicle and climate goals for the transportation sector. The Sierra Club is excited by the passage of legislation last year that would fully electrify NY’s State owned transportation fleet by 2035 and other measures to mandate more charging infrastructure in parking areas, but more needs to be done to transform our highways and city centers into convenient electric vehicle hubs.

**Ensure there is adequate funding and staffing to implement the climate law:** Almost nothing is more central to the successful implementation of our climate goals than the dedicated staff within our environmental agencies charged with the crafting of regulation, monitoring of our

natural resources and the enforcement of rules. And with converging global crises, our state environmental agencies have been asked to do more with less in this time of pandemic response and climate emergency. In the past three years alone the Department of Environmental Conservation (DEC) has been tasked by the legislature to take on many new responsibilities - administering the CLCPA, establishing the Office of Renewable Energy Siting, administering the new plastic bag ban, the polystyrene ban, the glyphosate ban on state lands, the trichloroethylene ban, the mandate to recycle food waste and organics, new drilling waste regulations, the phase out of PFAS, 1,4 dioxane, coal tar, neonicotinoids and chlorpyrifos, clean vehicle standards, paint stewardship laws, new wetlands regulations, Environmental Justice SEQRA provisions, Right to Repair rules - all on top of our baseline programs to protect air and water. It's clear that the DEC requires more staffing and funding.

New York has lost nearly a quarter of the DEC's workforce since the 1990s, which has meant fewer enforcement actions against polluters, increased spread of invasive species and less review of impending threats to our environment. There is little left to cut from this bare-bones agency.

Last year, Governor Kathy Hochul removed a decades-long agency hiring freeze, and the 2022-23 State Budget authorized the hiring of 94 new DEC staff in the next fiscal year, which is an excellent start to rebuilding the agency. But the legislature should do more to ensure the agency is adequately staffed, which should include consideration of incentive programs in our colleges and universities so that we can scale up the workforce for the next wave of climate professionals.

**Cap and invest: paying for the transition to a renewable energy economy:**

The Final Scoping Plan also recommended that a carefully constructed Cap-and-Invest Program would be the most feasible, and affordable method to raise revenue for the transition from fossil fuels to zero emissions technologies and phase out the most potent greenhouse gasses. Governor Hochul, in her State of the State address announce that the Department of Environmental Conservation (DEC) and New York State Energy Research and Development Authority (NYSERDA), based upon that recommendation, would be advancing an economy-wide Cap-and-Invest Program that establishes a gradually declining limit on greenhouse gas emissions, a credit market for emitters and an investment program with the proceeds that focuses on affordability and renewable energy development. It is our understanding that the CLCPA and the Environmental Conservation Law give the DEC broad authority to set up such a program without authorization from the legislature.

But in order to design a program that can benefit all New Yorkers, Governor Hochul will be seeking legislative partnership on some fiscal improvements to the Cap-and-Invest Program to offer universal Climate Action Rebates to families across the state, helping defray their costs (as only the legislature can authorize taxes and rebates).

The Sierra Club is excited about the prospects of the state developing an equity focused pollution reduction program as a revenue generator, but will reserve all judgment until there is more official language. We strongly encourage the legislature to work with the governor through the budget process so that DEC and NYSERDA have the fiscal tools they need to run an efficient program. We also encourage the Legislature to create and fund a Climate and Community Protection Fund that can interface with a Cap-and-Invest Program and help distribute funds where they are most needed.

## **Conclusion**

The Legislature must build off of the Final Scoping Plan's recommendations to ensure not only that the transition away from fossil fuels actually occurs but that overburdened communities receive the full benefits of that transition. Safeguards are also needed to ensure that the transition is affordable, that lower-income households are able to electrify their homes and their transportation options without exacerbating already-challenging energy burdens, and that the new jobs created are high quality and located in New York.

Sierra Club believes the goals of the Scoping plan are not only feasible but in New York's best economic interests. It is understandable that such a rapid transition to a 100% electrified and zero emissions building, transportation, and industrial sector will lead to concerns about costs, reliability, labor standards and job security for those especially invested in the old infrastructure. The Sierra Club is confident that if the legislature acts boldly, provides adequate transition funding, sets reasonable target dates and fair market signals, secures strong labor protections and removes regulatory barriers to new technologies, we can keep pace with our necessary climate goals, create healthier communities and generate economic growth that benefits working families.

Thank you for your consideration of these comments,

Robert Ciesielski, Chair  
Sierra Club Atlantic Chapter Energy Committee