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July 1, 2022

Hon. Doreen M. Harris  
President and CEO, New York State Energy Research and Development Authority  
Hon. Basil Seggos, Commissioner, New York State Department of Environmental Conservation  
c/o Draft Scoping Plan Comments, NYSERDA  
17 Columbia Circle  
Albany, NY 12203-6399

Re: Comments on the Draft Scoping Plan

Dear President and CEO Harris and Commissioner Seggos and Other Members of the Climate Action Council:

Citizen Action of New York (“Citizen Action”) welcomes the opportunity to submit these comments on the Draft Scoping Plan (“Draft Plan”) adopted by the Climate Action Council (“CAC”). Citizen Action is a not-for-profit grassroots membership organization that advocates for social, racial, economic and environmental justice with affiliates and chapters in eight regions of New York State. Among our policy concerns are climate justice, housing, criminal justice, state and federal budget policies, fair elections, and consumer rights. In each of our regions, we have paid professional staff that involve our members and supporters in local, state and federal advocacy campaigns on one or more of these issues.

Citizen Action serves on the Steering Committee of NY Renew, a multi-sector coalition of over 300 organizations throughout New York State that unites groups to build action for climate, jobs and justice. NY Renew was the leading coalition that championed and helped to draft the Climate and Community Protection Act (“CCPA”), which ultimately became our state’s landmark climate law, the Climate Leadership and Community Protection Act (“CLCPA” or the “Climate Act”). Citizen Action also participates in campaigns in regard to climate and energy that impact on local residents in regions of the state where our chapters are located. For example, we are a leader of SHARE (Sheridan Hollow Alliance for Renewable Energy),<sup>1</sup> which successfully convinced the state not to add two fracked gas turbines to an existing facility that

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<sup>1</sup> SHARE’s web page appears at: <https://sharealbany.org/>

provides power for several state buildings in downtown Albany, including the Capital building, thus exacerbating the longstanding health impacts on an environmental justice neighborhood. SHARE is now advocating that the state convert the Capitol building and other nearby state buildings off fossil fuels. Citizen Action has also in recent years intervened in related proceedings before the Public Service Commission (“PSC” or “Commission”) to successfully oppose an application to construct the proposed “Albany Loop” fracked gas pipeline in the Capital District and to raise issues in regard to the PSC’s implementation of the CLCPA.<sup>2</sup>

We will only briefly mention here the urgency of the climate crisis. The Draft Plan summarized clearly many of the conclusions of the IPCC (Intergovernmental Panel on Climate Change) Sixth Assessment Report, including increased global mean surface temperatures, changes in precipitation, and rising sea levels,<sup>3</sup> as well as the well-documented health, economic and other impacts on New Yorkers of our continuing reliance on fossil fuels. The Draft Plan also clearly articulated the importance of action by New York State, both as a contributor to the climate crisis, and as a beacon for other states and nations to follow. **Simply put, the Draft Plan makes clear that state government knows what to do, and acknowledges that meeting the targets in the Climate Act is feasible. The leaders of our state, including the CAC, the Governor, state agency leaders and the Legislature, must have the courage to act rapidly and decisively to address the urgency of the moment, despite the barriers placed in their paths by well-funded industry players who benefit from the continuation of the existing fossil-fuel based state economy.**

Given the overwhelming evidence of and urgency of the climate crisis, as documented by the IPCC, the CLCPA must be broadly interpreted and enforced to accomplish the purposes of reducing greenhouse gas (“GHG”) emissions and achieving the social justice goals of the Climate Act, including providing remedies and funding for disadvantaged communities who have been victimized for decades by pollution and disinvestment.

These comments first address several generic issues in regard to the implementation and enforcement of the Act (Section I), followed by issues that cross different industry sectors (Section II). We then follow with comments applicable to certain specific sectors of the economy -- transportation, buildings, and electricity and power generation -- where Citizen Action has particular concerns or expertise (Section III).

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<sup>2</sup> Case 19-T-0069: Application of Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Capacity and Public Need Pursuant to Article VII of the Public Service Law for the Pipeline E37 Reliability and Resiliency Project in the Town of Bethlehem, Albany County and the Towns of East Greenbush and North Greenbush, Rensselaer County; Case 20-E-0380: Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid For Electric Service; Case 20-G-0381: Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid For Gas Service. In the rate proceeding (Case Nos. 20-E-0380 and 20-G-0381), National Grid agreed to withdraw its application to build the Albany Loop pipeline. The company subsequently did withdraw its application.

<sup>3</sup> See New York State Climate Action Council Draft Scoping Plan (December 20, 2021), at 6, <https://climate.ny.gov/Our-Climate-Act/Draft-Scoping-Plan> (“Draft Scoping Plan”).

## I. Implementation and Enforcement

While voluntary action by private businesses and individuals will undoubtedly be critical to achieving the GHG greenhouse gas, co-pollutant and renewable targets in the CLCPA<sup>4</sup> (the “CLCPA targets”), **the CLCPA also envisions a predominant role for state enforcement.** Yet, the Draft Plan too often relies on voluntary action and on projections -- highly speculative in light of the thirty-year timeframe and other uncertain factors -- that the CLCPA targets will be achieved if the suggestions in the Draft Plan for public and private action are followed.

The CLCPA’s Legislative Findings make clear the legislative intent to build on past state climate laws and regulations by “creating a comprehensive *regulatory* program to reduce greenhouse gas emissions...”.<sup>5</sup> **The statutory language also is clear that the Legislature and the Governor intended the GHG targets to be achieved by legal mandates on industry and individuals.** Most notably, the CLCPA says that the Department of Environmental Conservation (“DEC”) “shall, pursuant to rules and regulations promulgated ... establish a statewide greenhouse gas emissions limit”<sup>6</sup> and that such regulations shall “[i]nclude legally enforceable emissions limits, performance standards, or other *requirements* to control emissions from greenhouse gas emissions sources...”. Moreover, the Climate Act imposes a mandatory duty on DEC to “ensure” that the “greenhouse gas emissions achieved are real, permanent, quantifiable, verifiable, and *enforceable*.”<sup>7</sup> Finally, the statute mandates that the regulations “[r]eflect, in substantial part, the findings of the scoping plan,”<sup>8</sup> testifying to the importance of the Final Scoping Plan (“Final Plan”) providing clear and specific guidance to DEC and other relevant state agencies and entities as to what mandatory regulations are appropriate.

We were heartened to see in the Draft Plan that the CAC intends to “identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the Climate Act requirements” in the Final Scoping Plan (“Final Plan”).<sup>9</sup> A significant portion of these comments are directed at the failure of the Draft Plan in many instances to move towards specific recommendations in the Final Plan that would meet the critical goal of making the CLCPA mandates enforceable.

- 1. The Final Scoping Plan must specify the level of reductions in greenhouse gas emissions and co-pollutants that each industry sector must achieve by 2050 and the other target dates set forth in the CLCPA, and provide a timeline for achieving such reductions. The Final Plan should also specify the state agency or agencies responsible for enforcing the CLCPA targets for each sector. Taken together, the industry sector reductions must meet the CLCPA targets. The mandates for each industry sector should be legally enforceable against**

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<sup>4</sup> See Environmental Conservation Law (“ECL”) § 75-0107; Public Service Law (“PSL”) § 66-p.

<sup>5</sup> CLCPA § 1, Legislative Findings and Declaration, unnumbered concluding paragraph [emphasis added].

<sup>6</sup> ECL § 75-0107(1).

<sup>7</sup> ECL §§ 75-0109(2)(a), 3(b) [emphasis added].

<sup>8</sup> ECL § 75-0109(2)(c).

<sup>9</sup> Draft Scoping Plan, at 29.

**businesses and individuals and specify GHG emissions reduction targets for individual businesses when feasible.**

We are greatly disappointed that the Draft Scoping Plan does not ensure that the CLCLA targets are met. The Draft Plan: 1) does not clearly specify GHG emissions targets for certain industry sectors; 2) adopts some targets that are inadequate in light of the overall CLCPA targets (e.g., an 85% reduction in GHG emissions by 2050); and 3) includes too many goals for industry action that depend on voluntary action by industry and individuals rather than mandates. **We recommend that the Final Scoping Plan instead set forth detailed recommendations for regulations and, if necessary, legislation for each sector of the economy that ensure that the CLCPA targets are ultimately achieved, and that specify which agency or agencies should enforce each industry sector target.**

**The Final Plan should also provide for interim benchmarks, ideally annual benchmarks, specifying the reductions required for each time period by industry sector.** Once targets are set by industry sector, the Final Plan should specify in detail the regulatory mechanisms by industry sector necessary to ensure that each sector can achieve its goals, and the steps, including legislation, necessary to achieve these goals. We strongly urge that “negative emissions” not be significantly relied upon to achieve the CLCPA targets.

As various state agencies will be involved in standard setting and enforcement, one of the central focuses of the Final Scoping Plan should be delineating the responsibilities of each agency. While the CLCPA clearly places the primary responsibility for enforcement of the GHG limits on DEC, the statute is absolutely clear that other state agencies are authorized -- indeed mandated -- to promulgate regulations that are necessary to achieve the GHG emissions limits in the CLCPA. Specifically, Section 8 of the CLCPA states that certain enumerated state agencies, including, for example, the PSC, the New York State Energy Research and Development Authority (“NYSERDA”), the Department of Transportation and the Department of State and “any other state agency *shall* promulgate regulations to contribute to achieving the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law.”<sup>10</sup> Removing any ambiguity about the mandatory nature of the establishment of regulations by agencies other than DEC, the CLCPA directs DEC to “work with other state agencies and authorities to promulgate regulations *required* by section eight” of the CLCPA.<sup>11</sup>

One example of legislation that the CAC could consider as a model for the policies that could be included in the Final Scoping Plan is the Gas Transition and Affordable Energy Act. The bill, among other things, requires the establishment of a statewide gas service transition plan in conformity with the CLCPA, to transition the polluting gas distribution industry off fossil fuels based on clear biannual sales reduction targets.<sup>12</sup> We believe that the principles embodied in this bill could be applied to all industry sectors. Legislation is presumably necessary at least for

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<sup>10</sup> CLCPA § 8(1).

<sup>11</sup> ECL § 75-0109(1) [emphasis added].

<sup>12</sup> The bill, A9329 (Fahy)/S8198 (Krueger), had 34 Assembly and 14 Senate sponsors as of the end of the 2022 regular legislative session in June.

some industry sectors that either authorizes or improves agency enforcement or that clarifies the obligations of industry and consumers.

We do not assume that the industry benchmarks will necessarily reflect each sector's pro-rata share of GHG emissions, as technology, market factors or both are likely to impact the pace at which each industry sector is able to transition away from fossil fuels. Moreover, as later adoption of renewables is likely to be harder to achieve and be costlier, the Final Plan should seek opportunities to mandate faster progress in the early years.

The Draft Scoping Plan in some instances does set forth regulatory measures with specificity that seem to move towards a workable plan for achieving specific GHG emissions reductions for certain industry sectors. For example, in the buildings chapter of the Draft Plan (Chapter 12), a number of measures are recommended, including, but not limited to the adoption of amendments to the State Energy Code applicable to new construction of commercial and residential buildings to increase efficiency and adopt to the new emissions standards, after appropriate authorizing legislation.<sup>13</sup> However, Chapter 12 is still insufficient, as it does not specify the total GHG emissions reductions that must be achieved by industry sector, and a timeline.

The lack of clarity in the Draft State Plan as to enforcement is particularly clear as to the electricity sector. While the Draft Plan calls in passing for the PSC, NYSEDA, DEC, and the New York State Energy Planning Board to “work in coordination... and set a ...timeline for emissions reduction targets,” based on “effective mechanisms for input and comments from stakeholders,”<sup>14</sup> the Draft Plan provides no assurance these new targets will be achieved, particularly in light of the built in impediments to achieving GHG reductions.<sup>15</sup> For example, PSC's standard practice is to determine the rates utilities may charge for gas and electricity (typically for a three-year period) in “rate proceedings” that in fact include both revenue issues and policy steps. The policy steps include, for example, the funding of prospective and ongoing projects like gas pipelines which undoubtedly impact on GHG emissions of the company. The Commission's standard practice is to resolve rates, revenue and policy issues through confidential negotiations involving the utility, the Department of Public Service and other interested parties. **The impact of these comprehensive negotiations is that the statutory obligation under the CLCPA of meeting the GHG targets can be and is traded against the myriad of other issues considered in rate proceedings. The Final Scoping Plan must therefore insist that the PSC end the practice of trading compliance with the CLCPA for other rate**

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<sup>13</sup> Draft Scoping Plan, at 126-27.

<sup>14</sup> *Id.*, at 156.

<sup>15</sup> The PSC has recently issued an order initiating a proceeding in regard to CLCPA implementation. Case 22-M-0109: Order on Implementation of the Climate Leadership and Community Protection Act, In the Matter of Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act (May 12, 2022), [file:///C:/Users/User/Downloads/%7B5F73F855-B506-41B3-AB05-3CF66F736497%7D%20\(1\).pdf](file:///C:/Users/User/Downloads/%7B5F73F855-B506-41B3-AB05-3CF66F736497%7D%20(1).pdf). However, nothing in the Commission's May 12, 2022 order initiating the proceeding indicates that the Commission is considering incorporating annual benchmarks for the electric and gas sector along the lines we have outlined, or improvements to the PSC's procedures, including limits on confidential negotiations.

**proceeding issues**, by some mechanism, like excluding policy issues that impact on the CLCPA from the confidential negotiations, assigning them to public regulatory proceedings.<sup>16</sup> The procedural rules for these public proceedings must provide for meaningful public input, including the right to submit testimony, to participate in discovery, and to participate in discussions with decisionmakers before the decision is made.

The CAC should also review the state’s regulatory structure by industry sector to ensure that effective mechanisms are in place to ensure that all New York businesses and residents comply with the clear GHG and co-pollutant reduction targets set forth in regulations and legislations and that these targets are enforceable against businesses and individuals in the Final Plan. When appropriate, specific GHG reductions targets should be set for the state’s investor-owned utilities and other large businesses.

**2. The Final Scoping Plan should clarify the obligations of each state agency and entity concerning CLCPA Sections 7(1), 7(2), and 7(3) and outline aggressive policies to decarbonize the operations of state and local government and entities that contract with state government.**

While the focus of the Draft Plan is on meeting the GHG targets in Article 75 of the Environmental Conservation Law, the CLCPA also contains several important provisions in regard to the participation by state agencies and other entities like authorities in achieving the goals of the Climate Act. Specifically, Section 7(1) of the CLCPA requires all state agencies to “assess and implement strategies to reduce their greenhouse gas emissions.” Section 7(2), the “climate screen,” requires all state agencies and other entities to consider whether the permitting actions, contracts and other decisions each agency makes will “interfere” with the state’s attainment of its GHG emissions goals and to identify alternative GHG mitigation measures, if a decision is deemed to interfere with attainment of the emissions targets. Finally, Section 7(3), the “equity screen,” provides that permits, contracts and other decisions cannot “disproportionately burden” disadvantaged communities.

To properly implement the climate and equity screens, several ambiguous or unresolved legal issues concerning Section 7 need to be clarified. For example, Citizen Action believes that permitting any new fossil fuel facility will inherently interfere with attaining the

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<sup>16</sup> It is not a satisfactory answer to say that any party, including an environmental group, can choose to participate in PSC rate negotiations. While a small number of fairly well-resourced environmental organizations and an even smaller number of “grassroots” groups impacted by proposed fossil fuel facilities have historically participated in rate proceedings, at least on a limited basis, the PSC’s strict confidentiality provisions severely hamper such groups from collaborating with allies and members of the general public who do not have the resources to sit through hours of negotiations. Even those who do participate do not have close to enough resources to match the expertise (for example, by hiring economists) of the large corporate utility companies and other business interests they confront. Confidential negotiations do not allow critical policy issues to be publicly aired on their own merits, as a public regulatory proceeding would permit. Finally, while all individuals and groups admitted as parties are technically entitled to participate in confidential negotiations under the Commission’s rules, as a matter of custom, the utility and the DPS staff have built in advantages in the negotiations; for example, these two parties typically set the agenda for negotiations meetings, and chair the discussions.

GHG emissions limits, but we concede that others may read Section 7(2) differently. Similarly, the PSC seemed to suggest in a recent decision that the Commission’s longstanding obligation under Public Service Law Section 65(1) to ensure that gas and electric corporations provide “safe and adequate service” trumps in some instances Sections 7(2) and 7(3).<sup>17</sup> While we adamantly disagree with this view, we believe that such issues and enforcement strategies need to be resolved on a uniform basis across agencies to ensure that the CLCPA targets are achieved. **We therefore need cross-agency legal interpretations setting a floor as to the minimum obligations of agencies and other entities, as well as procedures to be followed.**

**As various sections of the Draft Scoping Plan note, state and local government must also take the lead in reducing the GHG emissions as to their internal operations.** This extends to multiple sources of emissions, including buildings and appliances, and transportation, including school bus fleets and public transit. It simply is unacceptable for state government to issue mandates on private entities (businesses and individuals) and not play an aggressive role in exercising leadership on climate mitigation. And, state leadership can help to develop models that public and private entities can follow to decarbonize, thus informing the state’s technical assistance efforts. Finally, CLCPA Sections 7(2) and 7(3) demand that these agencies also modify their permitting and contracting efforts so that they further the GHG reduction and social justice mandates of the law. Consistent with the spirit of these provisions, we support polices to require those who contract with the state to transition off fossil fuels.<sup>18</sup>

Further, many state agencies simply lack broad expertise as to climate policies, including as to how they can implement Section 7(1) as to their internal operations, such as use of vehicles, designing their office operations, and the like. This lack of expertise and resources is likely to make agency administrators reluctant to make changes in their internal practices.

Without central guidance, state agencies and other state entities are more likely to unevenly or weakly implement the CLCPA, making it more likely that the CLCPA targets will not be achieved, or achieved in a less cost-effective manner. **We therefore recommend that a central entity of the state, presumably the Governor,<sup>19</sup> should issue guidance to state agencies on the proper meaning and implementation of key CLCPA provisions, and the procedures to be followed, based on recommendations that should be set forth in the Final Scoping Plan.**

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<sup>17</sup> See Cases 20-E-380, 20-G-0381: Order Adopting Terms of Joint Proposal, Establishing Rate Plan and Reporting Requirements (January 20, 2022), at 79 (calling the mandate under PSL § 65(1) the Commission’s “core responsibility”).

<sup>18</sup> For example, we support the recommendation in the Draft Scoping Plan to require ZEV equipment use for state contractors and at targeted facilities. Draft Scoping Plan, at 106.

<sup>19</sup> We believe that the Governor, as the chief executive of the state, is in the best position to issue such guidance, with input from a number of entities, including DEC, NYSERDA and the Department of Law. That said, we are open to another entity playing such a role, as long as such entity has the active support of the Governor and she agrees to follow and implement the guidance. This guidance should be promulgated only after a robust public comment period and hearings.

**In addition, we recommend that a central entity -- either a new or existing entity -- be tasked with the responsibility of coordinating the decarbonizing of state operations.** This entity could be the CAC itself. In addition to a lack of expertise and resources, many the responsibilities as to state agency operations are not vested in the individual agencies, and are instead under the auspices of specialized agencies like the Office of General Services and the State Comptroller, arguing further for a central entity.

**3. The Final Scoping Plan should establish a process to ensure the achievement of the CLCPA investment mandate.**

Under the CLCPA, at least 35% (with a goal of 40%) of the benefits of energy and related programs must benefit “disadvantaged communities.”<sup>20</sup> The CLCPA “investment mandate” is intended to ensure that communities of color and low-income communities will get their fair share of the benefits of our state’s transition to a renewable energy economy, as a means of addressing the impacts of the placement of polluting facilities in their neighborhoods and other harms they have historically suffered. Citizen Action, along with other groups, is now closely examining the Climate Justice Working Group’s (“CJWG”) criteria and list as to which communities are considered “disadvantaged” under the statute.<sup>21</sup>

In addition to determining which communities will be designated as Disadvantaged Communities (“DACs”), **we believe that the Governor or some other state entity, with the strong input of the CJWG and key stakeholders, should provide formal guidance to state agencies and entities that are subject to the investment mandate as to how to modify their budgeting, contracting, grant-making and other procedures to implement this critical provision.** Without such guidance, and strong leadership by this and future governors, the investment mandate provision is unlikely to be implemented in accordance with the statutory intent.

One feature that we believe should be included in the guidance is providing flexibility as to the size of the DACs that will receive funding under the CLCPA’s investment mandate. Census tracts -- the unit preliminarily selected for the purpose of determining whether a community is considered “disadvantaged” -- may be too large or too small to allow communities receiving funds under the investment mandate to design projects that are effective and efficient in meeting the needs of their communities. Therefore, the guidance should provide that project applicants for CLCPA investment mandate funding should be given the option of proposing projects that serve contiguous census tracts that are each designated as DACs if this in the applicant’s view best meets the needs of their community. State agencies and other entities awarding such funding should similarly be given the discretion to fund projects that span multiple census tracts. Consideration should also be given to addressing the opposite situation: when the project applicant claims that the census tract is too large.

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<sup>20</sup> ECL § 75-0109(1).

<sup>21</sup> See Disadvantaged Communities Criteria (CAC web portal), <https://climate.ny.gov/Our-Climature-Act/Disadvantaged-Communities-Criteria>; DEC Press Release, “New York State Releases Draft Disadvantaged Communities Criteria to Advance Climate Justice” (March 9, 2022), <https://www.dec.ny.gov/press/124892.html>.

**4. The Executive should submit legislation to address the gaps in enforcement and implementation of the CLCPA and to resolve ambiguities as to the meaning of existing statutes.**

Through the Draft Scoping Plan, the CAC has identified areas that require legislation to supplement the CLCPA. Citizen Action recommends that the CAC include in the Final Scoping Plan a concrete listing (perhaps in an appendix) of not only the regulations, but the legislation necessary to fully implement its recommendations.

If the CAC deems it does not have the capacity to actually draft all of the legislation necessary to implement the Final Scoping Plan for submission to the Legislature, the Governor should direct the appropriate agencies to draft legislation for industries subject to their jurisdiction. The CAC should also consider endorsing existing legislation that is consistent with its recommendations. Given the extreme urgency of meeting the GHG targets in the CLCPA, we highly recommend that all new legislation sponsored by the CAC or the administration be submitted at the latest by early in the 2023 legislative session, to correspond with the January 1, 2024 statutory mandate for the issuance of the final DEC GHG emissions reduction regulations.<sup>22</sup> However, in some instances, for example in the case of the state's low rise construction code, it will be necessary to develop and submit legislation at an earlier time, given the urgency of action in this sector.<sup>23</sup>

**5. The monitoring process established under the Final Scoping Plan must closely support the efforts of DEC and other state agencies and entities charged with enforcing the GHG emissions reduction mandates.**

Citizen Action praises the CAC for acknowledging in Chapter 23 of the Draft Plan that “monitoring and reporting on the results of our efforts and a robust public process” is critical to successful achievement of the GHG and co-pollutant reductions mandated by the Climate Act.<sup>24</sup> However, in addition to the information subject to reporting mentioned in the Draft Plan, we believe that the CAC should recommend the collection and public reporting of data in a more granular manner to provide additional assurance that the GHG emissions and co-pollutant goals are achieved.

For example, consistent with our recommendation that benchmarks for reduction of GHG emissions should be set by industry sector, we recommend that the annual inventory of GHG emissions required by the Climate Act should be broken down by industry sector, and ideally by the agencies responsible for enforcing emissions for each industry sector. Such a requirement would enable state leaders and the general public to evaluate where we are falling short and to make modifications of enforcement policies if necessary. Further, we strongly

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<sup>22</sup> See ECL § 75-0109(1).

<sup>23</sup> See Draft Scoping Plan, at 125.

<sup>24</sup> *Id.*, at 327.

support the creation of a database posted on the web as to which businesses have been adjudicated in violation of the GHG emissions and co-pollutant targets in the CAC (assuming targets by industry and large businesses have been established, as we recommend), and the actions taken by enforcement agencies (e.g., the fines imposed and other remedies ordered).

## II. Cross Sectoral Issues

### 1. The Final Scoping Plan should avoid “false solutions” to the climate crisis.

In light of the demonstrated urgency of the climate crisis, some of the technological solutions proposed throughout the Draft Plan are in our view extremely problematic. Several of these “false solutions” were documented in a 2021 NY Renews report,<sup>25</sup> and the CJWG has repeatedly raised concerns about certain technologies proposed in the Draft Plan.<sup>26</sup> False solutions to the climate crisis continue to be used by the fossil fuel company, utility companies and other impacted industries to support their current business models.

An example in the Draft Plan that gives us concern is the statement in the section of the Draft Plan on electricity and power generation (Chapter 13) that “advanced hydrogen and possibly RNG” could potentially be used to “maintain reliability,”<sup>27</sup> despite the views of the CJWG that the 70% 2030 renewable electricity target could be achieved with existing technologies.<sup>28</sup> Given the environmental (e.g., air quality), equity, and cost concerns presented by these technologies, the CAC should reject these false solutions, unless future solid scientific evidence supports these technologies, and no reasonable alternatives are available.

### 2. We prefer Scenario 3 of the scenarios set forth in the Draft Scoping Plan.

The Draft Plan sets out three scenarios (2, 3, and 4) to achieve the GHG emissions reductions in the CLCPA.<sup>29</sup> Citizen Action recommends Scenario 3 because, briefly, unlike Scenarios 2 and 4, Scenario 3 achieves the GHG emissions limits with a very limited role for technologies like low carbon fuels, bioenergy and hydrogen combustion, industry-driven solutions that are untested, have serious health implications, entail serious equity concerns, and/or are unnecessary to achieve the CLCPA emissions limits (see Section II(1)). Instead, New

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<sup>25</sup> NY Renews, “False solutions, gas and trash: how the fossil fuel industry is holding back a just transition” (March 2021),

<https://static1.squarespace.com/static/58ae35fddb29d6acd5d7f35c/t/60351d79b4a58450d1f9dd8b/1614093694407/False+Solutions+Report+-+FINAL.pdf>.

<sup>26</sup> See Draft Scoping Plan, Appendix B: “CJWG Feedback on Advisory Panel Recommendations,” hereinafter, “Appendix B.”

<sup>27</sup> See Draft Scoping Plan, at 178.

<sup>28</sup> Appendix B, at 14 (page B-7).

<sup>29</sup> Draft Scoping Plan, at 70-71. Scenario 1 -- adopting all of the recommendations of the various advisory panels -- is apparently not under consideration, as the recommendations together didn’t meet the CLCPA emissions targets. *Id.*, at 70.

York should move forth aggressively by emphasizing electrification of buildings and transportation and energy efficiency, central features of Scenario 3.<sup>30</sup>

**3. The state should establish by legislation a mechanism to provide significant state funding to facilitate reductions in greenhouse gas emissions and co-pollutant reductions and to vastly accelerate the state’s transition to a renewable energy economy.**

As stated in the Draft Plan, a policy that prices GHG emissions serves at least three distinct purposes: 1) inducing industries and individuals to reduce GHG emissions, as required by the CLCPA; 2) providing a funding source to advance the goals identified in the CLCPA, including investing to benefit disadvantaged communities; and 3) providing a consistent “market signal” to influence individuals and businesses to reduce emissions, and to support clean technology market development.<sup>31</sup> **In our view, policies to price GHG emissions are critically necessary to transform the state economy to meet the goals of the CLCPA.**

It is clear that fully addressing the climate crisis and environmental injustice in New York also will cost tens of billions in private *and* public investments. While the cost of renewables like wind and solar are already less in many cases 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 funding 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. Addressing the climate crisis will be no different. And some necessary components of the transition to a renewable energy economy, like expansions of public transportation, simply cannot happen without significant government dollars.

Citizen Action therefore urges the CAC in the Final Scoping Plan to recommend passage of the Climate and Community Investment Act (“CCIA;” A6967, Cahill/S4264, Parker) to achieve the three goals set forth by the CAC. The CCIA would institute a fee on carbon and other greenhouse gas pollutants, requiring companies supplying fossil fuels to pay for their contributions to the climate crisis, thus generating revenue to invest back into disadvantaged communities. Starting at \$55 per ton of greenhouse gas emissions, the polluter fee created by the bill is expected to generate \$15 billion from corporate polluters each year in the first decade. The fee would be collected at the most upstream point to reduce the burdens on New York consumers. The revenue generated would be used both for large-scale, multi-region projects that reduce emissions and target areas of need, including major solar arrays, grid stability, electric vehicle charging infrastructure, and public transit, as well as smaller scale projects that benefit disadvantaged communities and the climate, like energy efficiency initiatives. The bill would also make workers impacted by plant closures and their communities whole by offering them benefits like job retraining and replacement of lost taxes in the case of

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<sup>30</sup> See Figure 6, Draft Scoping Plan, at 71.

<sup>31</sup> Draft Scoping Plan, at 252.

communities, and provide a rebate to most New Yorkers for anticipated increased energy costs in the short and medium term.

A polluter fee along the lines set forth in the CICA is also the right thing to do to make the fossil fuel industry pick up a significant portion of the tab for climate transformation. After all, for decades, the fossil fuel industry has routinely sacrificed the health of low-income communities for profit, poisoning entire neighborhoods without any consequence.

While we have not had the opportunity yet to fully study the bill, Citizen Action also recommends the CAC consider supporting legislation (S9417) submitted near the end of the 2022 legislative session to create a “Climate Change Adaption Cost Recovery Program” with the purpose of requiring large energy companies that have “contributed significantly to the buildup of climate change-driving greenhouse gases to the atmosphere to bear a proportionate share of the cost of infrastructure investments required to adapt to the impact of climate change in New York State.”<sup>32</sup> It appears that S9417 is not duplicative but complementary to the CCIA, as it focuses on providing funds for the retrospective damage to infrastructure and mitigating future harms to infrastructure (e.g. see walls, storm water system upgrades),<sup>33</sup> while the CCIA is focused on transitioning to a renewable energy economy and reducing greenhouse gas emissions in the future.

Citizen Action is highly skeptical about at least one additional alternative to a carbon tax presented in the Draft Scoping Plan: a cap-and-invest system.<sup>34</sup> As the CJWG has pointed out: the “[b]est available evidence shows that cap and trade systems do not eliminate air pollution hotspots,” and like the Regional Greenhouse Gas Initiative (“RGGI”) program, the funds generated are subject to “raids” in the state budget.<sup>35</sup> Further, unlike with cap-and-invest, the CCIA has numerous provisions to ensure that the funding generated by the proposed polluter fee will provide benefits to several groups of deserving New Yorkers, including disadvantaged communities (e.g., the opportunity to apply for grants for clean energy projects benefitting their communities); fossil-fuel impacted workers and their communities (e.g., retraining and income supports) and consumers, small businesses and non-profits (e.g., rebates for anticipated increased energy burdens). These features make the polluter fee in the CCIA a far superior funding mechanism to a cap-and-trade system.

A polluter fee modelled around the CCIA does not preclude the use of other fee-generating mechanisms tailored to achieving targets for certain industry sectors. For example,

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<sup>32</sup> S9417 (Krueger), Legislative Finding 4.

<sup>33</sup> See S9417, Proposed ECL § 76-0101(2).

<sup>34</sup> See Draft Scoping Plan, at 235 et seq.

<sup>35</sup> See Appendix B, at 4 (p. B-2). The threat of “raids” on RGGI is not merely a theoretical one, as the Governor and the Legislature have done this in several successive state budgets. Thankfully, raiding RGGI was rejected in the FY 2022-23 Enacted Budget, but this does not mean there is not a threat of this occurring in the future. See Environmental Advocates NY Press Release, “Advocates Hail NYS Budget’s Rejection of Clean Energy Raids” (April 11, 2022), [https://eany.org/press\\_release/advocates-hail-nys-budgets-rejection-of-clean-energy-raids/](https://eany.org/press_release/advocates-hail-nys-budgets-rejection-of-clean-energy-raids/).

we believe that the proposals in the Draft Plan for measures like variable pricing and parking policies, and mileage-based user fees should strongly be considered,<sup>36</sup> with appropriate provisions to mitigate the impact of such fees on low income people who, at least for an interim period until the price drops, will have difficulties affording ZEVs.

- 4. We agree with various recommendations in the Draft Plan emphasizing the need to promote alternatives to fossil fuels to consumers and businesses, and believe that a comprehensive marketing, outreach and information and referral campaign that covers multiple industry sectors should be instituted. We also support prohibitions on utility marketing of fossil fuels.**

Citizen Action strongly agrees with the recommendations throughout the Draft Plan for campaigns to promote the transition to a renewable energy economy in our state. One of several formulations in the Draft Plan that we find very promising is the idea of a “scale up” campaign, that employs a coordinated multilingual public and consumer education effort to promote the take up of renewable alternatives in the building sector, including traditional media, digital communications, influencer style campaigns, mailers and other mechanisms. We also agree that the outreach and marketing efforts should prioritize disadvantaged and other traditionally excluded communities.<sup>37</sup> **However, as the Draft Plan also suggests, critical to a successful outreach and marketing and information and referral effort is a well-funded coordinated campaign that impacts on multiple sectors of the state economy**, including but not limited to building electrification, clean transportation (e.g., electric vehicles), smart growth, food, and agriculture. At the Draft Plan, states: “[t]here are efficiencies of cost and time to be gained by developing a comprehensive outreach and education campaign rather than conducting this outreach by sector or by program.”<sup>38</sup>

The rationale for such a coordinated marketing, outreach and information and referral campaign is straightforward: consumer, business, governmental and community awareness of renewable energy options still remains relatively low. Surveys show consumers often associate renewable energy with environmental benefits, but are not aware of other positive attributes,<sup>39</sup> including that renewable energy alternatives are rapidly becoming cost-competitive and even cheaper than fossil fuel products. Businesses, consumers, local governments and other stakeholders like the media should know how to transition to renewables and the benefits of such a transition. And New Yorkers should be able to obtain information and referrals through a single Internet portal and phone information line maintained by New York State, a trusted resource.

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<sup>36</sup> See Draft Scoping Plan, at 117.

<sup>37</sup> See *Id.*, at 141-2 (focuses on improving consumer awareness of steps to decarbonize buildings).

<sup>38</sup> *Id.*, at 325-6.

<sup>39</sup> National Renewable Energy Laboratory, “Consumer Attitudes About Renewable Energy: Trends and Regional Differences,” (April 2011), <https://www.nrel.gov/docs/fy11osti/50988.pdf>. (While this study is roughly 10 years old, we assume the general conclusions cited in the main text remain true today, given the still rather low take up rates of renewable technologies like ZEVs and induction stoves.)

In designing such an effort, New York State energy officials should be guided by New York's nationally acclaimed experience with health insurance outreach and enrollment under the federal Affordable Care Act, enacted in 2010. An essential element of this successful program was the creation in New York (as in several other states) of a health insurance "exchange" that not only provides "one-stop shopping" for health insurance (called NY State of Health in our state), but also does significant advertising and outreach. NY State of Health utilizes a central Internet and phone hub that provides New Yorkers with accurate and standard information about health coverage, as well as "navigators" who work for non-profit organizations placed strategically throughout the state that have trusted relationships with residents of their communities and speak multiple languages. Partly as a result of these successful coordinated efforts, as of last year, 6.3 million New Yorkers obtained their health insurance through NY State of Health,<sup>40</sup> and New York has significantly reduced its uninsurance rate.

**Just as in health insurance, a well-resourced state effort that informs New York consumers and businesses of steps to assist with our state's transition to renewables like electrifying their homes, businesses, appliances and vehicles, and that informs them of resources to help them make this transition, is an essential component of any successful effort to move New York off fossil fuels.** Also critical is funding trusted community organizations to provide information and do outreach. This coordinated outreach and education campaign must in our view be coupled with prohibitions on regulated utilities continuing to market oil, gas and other fossil fuel products.<sup>41</sup>

##### **5. The Scoping Plan should include strong labor standards and a just transition for workers.**

As New York State transitions to a renewable energy economy, it is critical that fossil-fuel dependent workers and communities do not get left behind. The CCPA, the forerunner of the CLCPA, initially included worker provisions like prevailing wage, apprenticeship, and minority and women business enterprises utilization standards for green energy jobs receiving state support. Although labor language was ultimately not included in the CLCPA (other than a brief provision reciting that the CLCPA is "subject to prevailing wage law"),<sup>42</sup> it is critical that the Final Scoping Plan strengthen the rights of workers across New York State and fully consider the needs of workers and their communities in restructuring our state's energy systems.

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<sup>40</sup> See NY State of Health, "Health Insurance Coverage Update: September 2021," [https://info.nystateofhealth.ny.gov/sites/default/files/Health%20Insurance%20Coverage%20Update%20-%20September%202021\\_0.pdf](https://info.nystateofhealth.ny.gov/sites/default/files/Health%20Insurance%20Coverage%20Update%20-%20September%202021_0.pdf).

<sup>41</sup> Limits on fossil fuel marketing have recently been incorporated in some recent utility rate agreements, but these marketing limits do not apply to all New York State utility companies, and the requirements are not uniform.

<sup>42</sup> CLCPA § 5.

**6. The Scoping Plan should incorporate measures that respect indigenous sovereignty throughout the implementation process.**

Citizen Action believes that it is imperative that indigenous communities are properly consulted around the processes taking place at the CAC, given the vast implications of policies, land practices, and funding practices on such communities. The Executive and the CAC should use appropriate Nation-to-Nation channels to ensure input from indigenous communities as to the Scoping Plan in a manner that respects the timeline for the unique decision-making processes among the Nations. Appropriate consultations must occur with state and federally-recognized tribes as well as non-recognized tribes with memberships in New York State.

Indigenous communities in New York State are on the frontlines of direct impacts of climate change. They are well informed about how to meet the energy needs of their people. Their voices are critical to ensuring the New York meets the ambitious climate goals set out in the CLCPA. There are presently many barriers Indigenous communities face in accessing and benefiting from the renewable energy transition that must be rectified in the Final Scoping Plan. These barriers and concerns can only be addressed if robust, genuine and dedicated Nation-to-Nation dialogue is conducted over time.

**III. Sectoral Issues**

Citizen Action’s comments in regard to the achievement of the GHG emissions reduction targets in the CLCPA for certain industry sectors are set forth below.

**Transportation Sector**  
(Draft Scoping Plan, Chapter 11)

Citizen Action supports many of the recommendations in the Draft Scoping Plan in regard to widespread adoption of electrification of light duty vehicles (LDV) in New York State, including, but not limited to incentives for Zero Emissions Vehicles (“ZEVs”) and charging station installation, and mechanisms like “freebates” which combine rebates for ZEVs with fees to disincentivize purchases of fossil fuel vehicles. We also support the general concept of removing statutory barriers to direct-to-consumer sales of ZEVs by manufacturers, provided that adequate consumer protections are included.<sup>43</sup> A few of our priorities for this sector are detailed below.

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<sup>43</sup> Draft Scoping Plan, at 102-104. Specifically, among the consumer protections that should be in place are remedies to ensure that repairs of defective vehicles are made and that manufacturers do not engage in deceptive practices like adding deceptive fees to the purchase or lease of ZEVs. In the current marketplace for fossil fuel vehicles, state regulation of in state franchised motor vehicle dealers is one of the major mechanisms to ensure proper repairs are made, and that consumers have remedies against persistently defective vehicles, and against deceptive fees and other practices. Statutes aimed at protecting consumers from improper practices in regard to motor vehicle sales are generally aimed at dealers and licensed repair shops, not manufacturers; we must make sure consumers of EVs are not “left in the lurch.” Therefore, before direct sales of ZEVs are permitted, there must be a review of current consumer protection laws in New York State in regard to motor vehicle purchasing and leasing, and consumer protections applicable to dealer sales and leases must be applied to manufacturers engaged

## Aggressive ZEV Sales Targets

We agree with other commenters that ZEV sales targets should be adopted by the CAC, to ensure that the dramatic necessary reductions for the transportation sector (close to 90% below 2016 levels by 2050) are met. Specifically, we support a target that 100% of LDV and bus sales and other Medium and Heavy Duty Vehicles (“MHDV”) should be zero emission by 2035, and 100% of MHDV sales should be zero-emission by 2035.<sup>44</sup>

## EV Charging

We agree with other commenters that a number of steps must be taken above and beyond current state programs to prepare for a future in New York where ZEVs will become the dominant means of transportation by individuals, families and small businesses in New York State (other than public transportation), including: 1) instituting an interagency planning process to ensure ZEV installations keep pace with ZEV adoption targets; 2) placing EV installations where EVs have not yet taken off, like rural and dense urban locations to ensure widespread take-up of ZEVs; and 3) targeting EV installations to multi-unit dwellings.<sup>45</sup>

However, extending the state’s EV charging infrastructure is not enough: we must ensure that the DC Fast Chargers that ZEV owners and lessees depend on to quickly charge their vehicles on long trips are placed at standard and reasonable distances from each other on interstates and major roads in New York State, as well as on rural roads and counties<sup>46</sup> and that this critical technology is reliable and user-friendly. As the literature, comments made by ZEV owners on “apps” like PlugShare aimed at ZEV owners and EV owners will reveal, fast charging on long trips can sometimes seem like the “wild west.” For example, there are often long waits at fast charging locations (due to, among other things, not enough chargers to meet current and anticipated demand),<sup>47</sup> fast chargers are frequently out of service (even when apps maintained by the owners or operators of the chargers say they are available and operating), broken chargers are frequently not repaired for days and weeks, customer service staff are frequently ill-trained and unhelpful, and fast chargers often have having inadequate or

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in direct sales. Further, consumer protection officials like the Attorney General should be consulted to ensure that New York can effectively enforce consumer protection laws against out of state manufacturers.

<sup>44</sup> See Comments of Earthjustice et. al. concerning the Draft Scoping Plan, Transportation (“Earthjustice Comments”).

<sup>45</sup> See Earthjustice Comments, Transportation. A recent audit by the State Comptroller found that nearly half of the state’s counties did not have a NYPA-installed charging station. Office of the New York State Comptroller, “New York Power Authority: Selected Management and Operations Practices” (February 2022), at 1, <https://www.osc.state.ny.us/files/state-agencies/audits/pdf/sga-2022-20s38.pdf>.

<sup>46</sup> We also agree with the Draft Scoping Plan that factors like alleviating pollution in LMI communities should be a significant factor as to decisions as to where to place EV charging stations. Draft Scoping Plan, at 106.

<sup>47</sup> While it is a positive development that the New York State Thruway Authority has now installed ZEV chargers at many rest stops (not all), it doesn’t do you much good when the single charger at the rest stop is already being used, leading to potential significant waits to use the charger. This argues for multiple chargers at each rest stop.

inaccurate information on how to operate the device.<sup>48</sup> It stands to reason that, as word gets around about these problems, it may make consumers more reluctant to purchase or lease ZEVs. This is true, even if ZEV range improves, as is rapidly becoming the case, and the price of EVs becomes more competitive with fossil fuel vehicles.

In response, the state must ensure, if necessary by regulation or legislation, that: 1) ZEV owners and lessees receive adequate information as to how to use DC Fast Chargers and are accurately informed when they are out of operation; 2) vendors responsible for operating and maintaining DC Fast Chargers in fact adequately maintain their charging stations and provide accurate consumer information as to how to use them; 3) payment systems for charging are regulated or at least monitored to prevent consumers from being overcharged and that fees for charging are not deceptive; and that 4) ZEVs can effectively “handshake” with chargers and payment systems. In determining what legislation and regulations are necessary, we recommend the CAC consult with the Department of Law, as the lead enforcement agency for consumer protection laws in New York State.<sup>49</sup>

### Rural Transportation

Citizen Action believes that greater attention should be paid to expanding green transportation alternatives for rural New Yorkers, particularly those who are low-income, or have disabilities or exceptional medical needs. While we of course strongly support proposals to enhance public transportation and mobility alternatives, including in rural locations,<sup>50</sup> the Final Scoping Plan must address the fact that expansion of public transportation (i.e., bus and rail lines) may not be cost-effective or convenient for New Yorkers who live far from major roads, and therefore are likely to rely on polluting cars and trucks that use fossil fuels for a period of time until ZEVs become more affordable and accessible. This may involve, for example, taxis and ride-hailing services, using EVs.

Further, given the health and equity benefits, we agree with Earthjustice and its allies that the recommendations in the Draft Scoping Plan in regard to electrifying school and bus fleets should be strengthened. Specifically, we endorse their recommendations that the Draft Plan should include: 1) a phase-out of new purchases of fossil fuel powered transit and school buses and in any case no later than 2029, 2) a total transition of bus fleets to zero-emission by 2035, and 3) adequate funding to minimize the cost burdens to transit agencies and school

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<sup>48</sup> The author of these comments, a ZEV owner, once spent roughly eight hours waiting with his wife for their EV to charge sufficiently through a slower “Level 2” charger to enable him and his wife to get home from a vacation after we received wrong information through an app maintained by the operator of DC Fast Charging station at a Thruway rest stop that the charging station was operable. In our view, New York State has a duty to monitor the performance of private vendors operating EV Fast Charging stations at rest stops and other state facilities.

<sup>49</sup> See Executive Law § 63(12); General Business Law Article 22-A. For example, the Attorney General has authority under section 63(12) to act against any business engaging in “repeated fraudulent or illegal acts or otherwise demonstrate[ing] persistent fraud or illegality in the carrying on, conducting or transaction of business.”

<sup>50</sup> Draft Scoping Plan, at 101-103, 107.

districts, and 4) policies to protect existing workers, and to ensure that DACs are prioritized for the purchase of all-electric buses.<sup>51</sup>

### Low Carbon Fuels

Citizen Action joins other commenters in expressing concern with the Draft Plan's consideration of the widespread use of low carbon fuels, including, for example, renewable diesel for various transportation applications, given the air pollution impacts and equity concerns. At a minimum, low-carbon fuels should be limited to those circumstances where electric technologies are shown to be technically infeasible. Further, since technology is advancing rapidly, any determination that alternatives to electricity is technologically infeasible needs to be reevaluated on a regular basis.<sup>52</sup>

### **Buildings Sector**

(Draft Scoping Plan, Chapter 12)

Citizen Action is generally supportive of many of the recommendations in the Draft Scoping Plan for the buildings sector, including but not limited to: 1) the adoption of advanced codes for highly efficient, all-electric, and resilient new construction, 2) the scaling up of public financial incentives and expansion of access to public and private low cost financing for building decarbonization, and 3) the expansion of the state's commitment to market development, innovation and "leading by example" as to state projects.<sup>53</sup> We have discussed below a few of our specific suggestions for this sector.

Electrifying buildings at the earliest possible moment is critical to New York addressing the climate crisis, and more specifically achieving the GHG emissions reduction targets in the Climate Act. Quite simply, we cannot say we are implementing the CLCPA unless we electrify our state's over 6 million residential and commercial buildings.

As the Drafting Scoping Plan states, the buildings sector is the largest source of GHG emissions statewide, at 32%. Alternatives to heating by gas and oil are today readily available to consumers and businesses, and these alternatives work well in cold climates, like throughout New York. As the Draft Plan states, "electrification of space and water heating with high efficiency heat pumps is a viable, cost-effective approach to decarbonizing operations for nearly all buildings in New York."<sup>54</sup> In particular, ground source heat pumps "perform well in extreme temperatures without the need for electric resistance or fuel back-up since heat is exchanged between the building and fairly stable ground temperatures via an underground piping system."<sup>55</sup> Similarly, as a quick visit to a local appliance retailer or an Internet search will tell

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<sup>51</sup> Earthjustice Comments, Transportation.

<sup>52</sup> Earthjustice Comments, Transportation.

<sup>53</sup> See Table 9, Draft Scoping Plan, at 123-24.

<sup>54</sup> *Id.*, at 120.

<sup>55</sup> *Id.*, at 120.

you, non-fossil fuel appliances like induction stoves are readily available today, and often comparable in price to appliances based on fossil fuels.

There are other significant benefits to making the transition to all-electric buildings. The transition will be a boon to the state economy. The Draft Scoping Plan projects the creation of 100,000 new jobs in energy-efficient construction and clean heating and cooling as a result of the transition.<sup>56</sup> Our state's conversion to all-electric buildings will also enormously contribute to public health in the form of, among other things, diminished asthma in children through the replacement of gas stoves.

### New Electric Buildings

New buildings should be a priority for action at the earliest possible moment. As Dr. Anshul Gupta, a leading researcher affiliated with the IBM T.J. Watson Research Center Dr. Gupta has stated: “[n]ew construction is [the] low-hanging fruit ...”. We must do it now, and not just because of the urgency of the climate crisis:

Appliances last 10-15 years; buildings can last decades. Every new building with on-site fossil fuel combustion is an *avoidable costly mistake* that locks in an unpredictable and polluting fuel for generations, or will require an expensive conversion in the future.<sup>57</sup>

Given the importance of addressing new construction early on, Citizen Action joins with over 150 social justice, climate, labor and community organizations to express our support for the All-Electric Building Act (“AEBA,” A8431/S6843), sponsored by Assemblymember Emily Gallagher and Senator Brian Kavanagh. The Act would prohibit the issuance of permits for the construction of any new commercial, residential, or mixed-use building that is not all-electric beginning on January 1, 2024, unless a finding is made that “constructing an all-electric building or project is physically or technically infeasible.”

Because of the clear feasibility of electrifying new construction, particularly smaller buildings, the Draft Plan recommends that the state's low-rise construction code be amended in 2023 to facilitate all-electric construction. To accomplish this, the Legislature must, according to the Draft Scoping Plan, enact authorizing legislation like the All-Electric Building Act in 2022.<sup>58</sup>

The failure of the Legislature to pass AEBA -- despite the strong recommendations of the CAC -- is simply unacceptable, as the major concerns expressed by opponents (in particular, the alleged high cost of all-electric buildings, concerns about grid capacity, and concerns about ratepayer impacts) are simply without merit.<sup>59</sup> We believe that the CAC should add its voice to

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<sup>56</sup> *Id.*, at 121.

<sup>57</sup> Anshul Gupta, PhD, “A Case for Building Electrification in New York,” at 12.

<sup>58</sup> Draft Scoping Plan, at 125.

<sup>59</sup> Citizen Action and many other climate justice organizations thoroughly debunked these concerns -- driven by utility and fossil fuel interests -- in our testimony at Assembly hearings held in May. See “Testimony by Bob Cohen,

others calling for immediate passage of AEBA early in the 2023 session, or earlier if the Legislature reconvenes in 2022.

Finally, it is critical that New York State end -- by regulatory changes and/or by legislation -- the incentives in current law for the construction of non-electric buildings, including the 100-foot rule. A provision to repeal the 100-foot rule is included in the Gas Transition and Affordable Energy Act (A9329 (Fahy)/S8198 (Krueger), which deserves rapid legislative passage.

### Existing Buildings

Citizen Action supports many of the proposals in the Draft Scoping Plan that impact buildings in New York State, including, but not limited to: 1) investment by the state in a “significant scale-up of financial support for energy-efficient building envelope upgrades and electric heat pump systems, with priorities afforded to Disadvantaged Communities;” 2) requirements to phase out fossil fuel use in existing buildings by requiring zero emissions equipment and appliances at the time of replacement; 3) state standards for building performance, appliances and equipment; and 4) adoption of advanced codes for highly efficient, all-electric and resilient new construction.<sup>60</sup> In addition, we must: 1) vastly increase financial support for energy efficiency and electrification upgrades (including for geothermal); 2) phase-in new emissions standards for existing buildings; 3) reduce the use of natural gas in buildings to zero by 2050; 4) mandate that the PSC adopt new rate designs which incentive efficiency and electrification; 5) better target existing funding for weatherization and energy conservation to encourage electrification rather than installing new boilers and appliances that rely on natural gas; and 6) target a greater percentage of the NY Sun funding to low and moderate income households, rather than commercial and industrial projects. The CAC must also reject strategies centered around “false solutions” like Renewable Natural Gas and hydrogen for transformation of the buildings sector. Finally, the Draft Scoping Plan recommendations should provide for flexibility in the funding of and administration of grant programs so that multiple beneficial purposes can be achieved: weatherization and building shell improvements can and should be combined with lead and mold remediation efforts, for example.

In undertaking the massive task of decarbonizing New York’s building sector, state policy should ensure a stepped-up role both for government and private industry. There is simply too much to be done to rely on only one sector. Therefore, Citizen Action urges the Governor to sign the Utility Thermal Energy Network and Jobs Act (A10493, Rules, Joyner; S9422, Parker), which would make the necessary changes to state law to enable New York’s investor-owned utilities to build geothermal systems on a large enough scale to make geothermal more

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Esq., Policy and Research Director, Citizen Action of New York, Before the Public Hearing on All-Electric Buildings,” Sponsored by the Assembly Energy Committee, the Assembly Governmental Operations Committee, the Assembly Environmental Conservation Committee and the Assembly Climate Change Working Group (May 12, 2022).

<sup>60</sup> See Draft Scoping Plan, at 121-129.

affordable to and accessible for low- and moderate-income New Yorkers.<sup>61</sup> The CAC or its individual members should consider making a similar recommendation to the Governor. There also needs to be a much greater role for state government, and strong oversight over state utilities who will be constructing large scale geothermal projects to make sure, for example, that this vital technology is made fully accessible and more affordable to low income New Yorkers.

### State Buildings

In Section I(2) of these comments, we recommended that guidance be issued to state agencies on how to decarbonize their operations and that a central entity be established or an existing entity assigned to coordinate state decarbonization efforts. In our view, one of the priorities of the state's decarbonization effort should be in the area of buildings and other facilities that the state owns or operates. While we of course support the general intent of the recommendation of the Energy Efficiency and Housing Advisory Panel that the state must take steps to reduce GHG emissions from state buildings,<sup>62</sup> in our view, this recommendation is not specific enough. Instead, the state must establish a schedule for decarbonizing all of the buildings the state owns.

The Final Plan should also advance the proposal set forth in or modelled on the Renewable Capitol Act ("RCA," A9341, McDonald/S8221, Breslin), which would require that the State Capitol building, Empire State Plaza and other nearby state buildings in Albany be electrified and otherwise run on renewables within three years of enactment, after a broadly representative planning process that considers a number of factors, including the environmental justice impacts. We believe that enactment of the RCA would both alleviate many of the harms caused by state operations for decades to a nearby environmental justice community and establish a model for other public and private entities to follow in reducing their carbon emissions. (Several other states have decarbonized their state capitol buildings.)

Further, it would totally unacceptable for the state to construct *new* buildings that are not all-electric, or to engage in major renovations or replacement of heating and cooling systems that utilize fossil fuels unless no renewable alternatives are available.

### **Electricity and Power Generation** (Draft Scoping Plan, Chapter 13)

The electricity and power generation sector must be addressed by state regulators with the greatest urgency, as the Climate Act requires that 70% of statewide electricity must come from renewable energy sources by 2030 -- only eight years away. The Draft Plan states that state achievement of this statutory mandate, as well as the statutory mandates for distributed

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<sup>61</sup> Despite our inclusion of Utility Thermal Energy Network and Jobs Act in our "existing buildings" section, it is important to note that the new law will apply to new construction as well.

<sup>62</sup> Draft Scoping Plan, at A-33.

solar and energy storage must be accomplished by “aggressive deployment of existing renewable energy technologies such as wind, solar and energy storage.” Further, the CAC states that the mandate that New York achieve a zero-emissions electricity system by 2040 is also achievable, with additional steps like further procurement of renewables and a “focus on developing new technology sources.”<sup>63</sup>

**We believe that ensuring that these goals are in fact achieved requires aggressive coordinated regulatory actions by state agencies responsible for the electricity and power generation sector**, including the PSC, the New York State Independent Systems Operator, DEC, and the Office of Renewable Energy Siting (ORES). These actions need to be overseen by the Governor, as the state’s chief executive. As we have noted earlier in these comments, close oversight by the Governor and her executive staff is the best way to ensure that state agencies aggressively fulfill their responsibilities under the Climate Act.

#### Existing Power Plants

**We agree with the CAC that critical to ensuring that the electric mandates are achieved is the establishment of a detailed process to ensure that existing fossil fuel generators are safely retired.** As the Draft Plan provides, the plan should provide for a year-by-year decline in emissions, with retirements of plants in DACs given priority.<sup>64</sup> While system reliability cannot be ignored, the relevant regulatory agencies like the PSC must insist on concrete evidence of any alleged threat to reliability before entertaining claims by power plant operators that their permits for fossil fuel plants must be continued, based on consistent definitions of reliability. We base this statement on our experience with fighting the Albany Loop gas pipeline proposed for the Capital District, in which the PSC failed to summarily reject National Grid’s permit application, despite the total lack of evidence provided by the company in its permit application that the pipeline was needed from both a supply needs and reliability perspective, and the company’s shifting definitions of reliability.<sup>65</sup>

#### New Power Plants

As we said in Section I(2) of these comments, **we believe that the permitting of any new fossil fuel plant will inherently interfere with attaining the CLCPA’s GHG reduction limits, thus violating Section 7(2) of the Climate Act.** To ensure that no new fossil fuel power plants are necessary, the CAC should insist that strategies that will avoid the necessity of new plants

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<sup>63</sup> *Id.*, at 150.

<sup>64</sup> *Id.*, at 155-156.

<sup>65</sup> See Case 20-E-0380: Direct Testimony of Bob Cohen, Esq. on Behalf of Citizen Action of New York, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid For Electric Service; Case 20-G-0381: Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid For Gas Service, (November 25, 2020). Fortunately, the company ultimately agreed to withdraw its application for the pipeline in the separate rate proceeding. That said, as we’ve argued in Section I(1) of these comments, confidential rate proceedings are a totally unsatisfactory means of making decisions as to facilities that impact on the achievement of the CLCPA GHG emissions reduction goals.

are rapidly deployed, including increased uses of energy efficiency and demand response, accelerating the growth of large-scale energy generation through steps like establishment by ORES of goals for the megawatts of renewable energy that should be permitted each year, large investments by the state in local transmission and distribution infrastructure, support for clean energy siting and promotion of community acceptance of renewables (including through aggressive public education and outreach), the promotion of community choice aggregation, and enhancement of the existing grid.<sup>66</sup>

#### **IV. Conclusion**

In closing, we would like to once again thank the CAC on behalf of Citizen Action of New York for the opportunity to offer our comments on the Draft Scoping Plan. We also thank the CAC members, leadership and staff for the countless hours you have invested in developing the Scoping Plan thus far and look forward to a continuing dialog with the CAC as to the best means to achieve the critical climate and justice goals of the CLCPA. Please do not hesitate to contact Bob Cohen at [bcohen@citizenactionny.org](mailto:bcohen@citizenactionny.org) or at (518) 265-6183 concerning these comments.

Very truly yours,



Bob Cohen, Esq., Policy and Research Director  
On Behalf of Citizen Action of New York

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<sup>66</sup> Draft Scoping Plan, at 158-165.