

VIA FIRST CLASS & ELECTRONIC MAIL

July 1, 2022

Hon. Doreen M. Harris, President and Chief Executive Officer  
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Re: Comments on the Draft Scoping Plan of the NYS Climate Action Council

Dear President Harris:

Enclosed, please find the Public Utility Law Project's ("PULP") comments on the Draft Scoping Plan published by the Climate Action Council. PULP appreciates the opportunity to share our comments.

#### A. Background

On July 18, 2019, the Climate Leadership and Community Protection Act ("Climate Act")<sup>1</sup> was signed into law. New York State's Climate Act is among the most ambitious climate laws in the world and requires the State to reduce economy-wide greenhouse gas emissions 40 percent by 2030 and no less than 85 percent by 2050 from 1990 levels.<sup>2</sup> The law created a Climate Action Council ("CAC" or Council) charged with developing a scoping plan of recommendations to meet these targets and place New York on a path toward carbon neutrality. In January of 2022, the Council released the Draft Scoping Plan ("Draft Plan") and opened public comment on the Plan.

On November 2, 2021, shortly prior to the release of the Draft Plan, the New York electorate voted to amend the New York Constitution to include environmental rights. As such, the right of all New Yorker's to "clean air and water and healthful environment" was forever enshrined in Article 1, Section 19 of the New York Constitution. While this does not relate directly to the duties passed on to the CAC through the Climate Act, the Council is in the unique position to provide recommendations to the State to ensure that this new right is being properly enjoyed by the residents of this state.

Public Comment on the Draft Plan closes on July 1, 2022. As such, PULP submits the following preliminary high-level comments for inclusion in the record.<sup>3</sup>

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<sup>1</sup> Chapter 106 of 2019 of the Laws of New York.

<sup>2</sup> See, Draft Scoping Plan Overview, p. 2 at <https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scoping-Plan-Overview.pdf>.

<sup>3</sup> PULP notes that it will file formal comments on the final Scoping Plan when it is released by the CAC in January 2023. These initial comments on the draft plan are therefore not intended to be exhaustive, but rather to provide a high-level description of some key areas PULP believes must be focused upon in the creation of the final scoping plan. Consequently, PULP's choice not to address every major issue in the draft plan herein should neither be implied as approval or rejection of the vital issues raised in the draft plan, but rather as a decision to address such issues at the time comments are filed upon the final plan after the record in this proceeding has been buttressed by the many thousands of initial comments filed on the draft plan.

## B. Summary

Against the background of global climate change, continuing intensification and greater frequency of major storms affecting New York, and growing impacts upon the State's agricultural sectors, shoreline communities and commerce, water resources and general livability of urban, suburban and rural communities, the State has embarked upon a massive transformation of its energy economy, housing market, transportation economy and waste processing markets – to name the four largest greenhouse gas (“GHG”) emitting economic sectors<sup>4</sup> – aimed at achieving “deep decarbonization” by mid-century. This transformation as outlined in the draft scoping plan will require a rapid transition away from the hydrocarbon combustion economy that underpins the energy, housing and transportation sectors, by use of low-carbon fuels where necessary, a quick movement to electric personal, moderate heavy duty and heavy-duty vehicles including, and electrification of all new building stock, and rapid building up of baseload generation renewable energy facilities.

At the same time, State decarbonization policy requires retention and expansion of the State's historic commitment to affordable energy, while simultaneously reducing historic environmental justice burdens upon disadvantaged communities, funding just and equitable transitions for jobs and communities dependent upon the current carbon-intensive economic sectors, and generally requiring that no less than 35% of the benefits of this societal transition accrue to the benefit of New York's most financially challenged, environmentally challenged and energy justice challenged communities. The task of meeting these legal requirements imposed by the Climate Act will be immensely difficult and require massive investments whose benefits will not accrue to the present, but rather to our future, to our children and future generations.

Achieving the transformation, the State has embarked upon will result in energy security, significant employment benefits through exportable green collar job expertise, health benefits and reduction of the costs and negative effects of our current transportation system. But as we discuss below, equity and affordability must be the guiding principles of this transformation and not simply tacked on at the end. Our state's agencies and public authorities containing the expertise to model and guide the transformation must cooperate as never before, layering existing subsidies, creating one-stop access to complementary programs, and collecting and leveraging the “big data” such agencies do not routinely manipulate in carrying out their usual work. Focusing upon PULP's special areas of concern related to decarbonization, low-income households and energy and water affordability, it is clear that without significant redesign of existing state programs and much more critical examination of the decarbonization process, low-income, fixed income and moderate-income households simply will not be able to afford the changes required to meet the State's goals.

Therefore, below, we focus on these initial comments of the scoping plan process upon affordability and overall cost concerns, progressive changes to energy utility ratemaking and involvement in energy efficiency, access and affordability of renewable energy for low-income rural and urban populations, and finally the problem of stranded assets caused by the transition away from the hydrocarbon electric and heat economies. PULP anticipates greater reliance upon data, legal interpretation and reference to initial comments of other stakeholders, and ongoing

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<sup>4</sup> See, Draft Scoping Plan Overview, p. 4.

dockets at federal and state agencies, as it formulates its formal comments to the final plan issued in 2023.

### C. Discussion

1. The concepts of equity and affordability must be considered throughout this process.

PULP recognizes that the total cost of implementing the important targets set by the Climate Leadership and Community Protection Act (“Climate Act”) has been fully quantified at this time, but projections estimate that it will cost billions of dollars.<sup>5</sup> Due to these projected total costs, equity and affordability must be at the forefront of the State’s review when determining how to implement the Climate Act and achieve. Affordability needs little explanation and is an historic mission of PULP, which is currently targeted in the State as paying 6% or less of one’s income on energy. While there is no similar standard yet for water, the national target for affordability is approximately 3% or less of one’s income on water and wastewater, but despite PULP’s efforts in promoting water affordability since 2015, the State is only slowly joining the national consensus on this topic. Finally, equity for the purposes of these comments and ongoing proceedings in New York and nationally means considering historic and financially “disadvantaged communities” such as environmental and energy justice communities that have historic borne the large share of pollution and public space loss from existing petrochemical energy installations.<sup>6</sup>

PULP has been involved with this process, including staff participation in the Power Generation Panel Working Group, and will continue to be involved through filing comments in the “disadvantaged communities” proceeding. New York’s most vulnerable having access to programs that help them obtain real benefits and achieve affordable outcomes is essential. PULP’s comments now and on the final scoping plan will help provide recommendations on how New York State can achieve the Climate Act’s important targets.

2. Stronger communication, collaboration, and action by our State Agencies is required for New York State to be successful in hitting our targets.

As has been true in previous ambitious large-scale undertakings, having all of NYS’ agencies at the table working together is necessary for our State to hit our vital decarbonization targets. Specifically, assurance that the NYS Office of Temporary and Disability Assistance (“OTDA”) is involved every step of the way to help low-income individuals is necessary. While OTDA is referenced in the draft scoping plan, it is limited to only 5 specific mentions while OTDA’s role is invaluable when it comes to maintaining affordability.

For example, existing energy assistance programs including the Home Energy Assistance Program (“HEAP”) grant and the Heating Equipment Repair and Replacement benefits run by local Departments of Social Services and NYC’s Human Resources Administration under OTDA, must be reformed and continually reviewed for additional modification as low-income customers are switched over to electric heating (i.e., air source and ground source heat pumps), heat pump-based hot water heaters and induction stoves, where applicable. While the goals of

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<sup>5</sup> See, e.g., Draft Scoping Plan Overview, pp. 10-11.

<sup>6</sup> See, e.g., <https://www.theguardian.com/us-news/2019/apr/04/new-york-south-bronx-minorities-pollution-inequity> and see <https://pubmed.ncbi.nlm.nih.gov/659357/>.

lowering heating and cooking bills despite the high added costs of electrification and a strong reliance upon energy efficiency are key, addressing spikes in energy prices and “cost of ownership” of replacement electric appliances and furnaces for New York’s most vulnerable is necessary.

Another area where greater collaboration is needed is between OTDA and NYSERDA. With OTDA’s Heating Equipment Repair and Replacement program and NYSERDA’s EmPower program, automatic referrals of low-income individuals in need of a new furnace or boiler should be directed to NYSERDA where the individual can be considered for electric heat pumps, hot water heat pumps, greater energy efficiency investments and weatherization, and energy efficiency audits and assistance. As PULP has demonstrated in rate case testimony in the DPS’ department matter manager (“DMM”), such collaboration was necessary to meet State energy efficiency and affordability goals even before the transition embodied in the draft plan takes place.

PULP has already encountered situations where the lack of coordination between OTDA and NYSERDA has had direct, adverse consequences for New Yorker’s. One such example involves low-income residents living in sub-metered buildings. NYSERDA has recommended that multi-dwelling buildings switch to sub-metered style billing. In sub-metered buildings, a third party, usually the building manager or sub-metering company, pays the utility bill and is then reimbursed by the tenants based on the tenant's actual usage. However, PULP has found cases where low-income tenants who reside in particular sub-metered buildings are not eligible to receive either the Regular HEAP grant or the utility’s Energy Affordability Program (EAP, another funding source lowering energy burdens for low-income rate payers), because residents of sub-metered buildings do not possess an account with the utility, a prerequisite for acceptance in those programs. PULP has had one specific experience where a low-income resident, residing in a fully electrified building following the NYSERDA recommendations for sub-metered, multi-dwelling buildings, is unable to afford their electric service and does not qualify for the appropriate benefits. This is the antithesis of the “just transition” the State must create and protect and highlights the need for state agencies to work together to ensure that no household is harmed while the State’s policy works for the public good.

The Draft Scoping plan indicates that EmPower New York now has a geo-eligibility component for households located in communities with more than 50% of residents at or below 150% of the federal poverty level. (DSP at 35). PULP supports this advancement but hopes that a stronger working relationship with OTDA will result in more referrals from their agency to NYSERDA as streamlining applications and pairing low-income households with these wraparound services will help them lower their energy bill and help maintain affordability.

PULP also supports the NY Sun Solar Equity Framework (aka “Solar for All”), where \$200 million was directed to increase access to solar energy for low- to moderate-income (LMI) households, affordable housing, and environmental justice communities. *Id.* However, we believe that \$200 million is just the starting point as a much more ambitious investment for LMI renewables is needed.

### 3. Modifying New York’s LMI financial assistance plans and programs.

PULP is thankful that the Draft scoping plan calls for the expansion of the State’s Low-Income energy utility bill assistance program, also called the Energy Affordability Policy (DSP at 132). The Draft Scoping Plan does not go into detail about how the EAP should be expanded,

so PULP would encourage the State to modify it from a cap-based program, which currently limits funding to 2% of the utility companies' revenue, to a needs-based program that will be funded sufficiently to help all households in need. PULP also suggests that the reforms begun by the DPS and PSC in 2021 to broaden eligibility for the EAP should be continued as enrollment falls far below the actual income-eligible population in New York that should be enrolled in such a program by at least 1.5 million households.

As noted above, PULP believes that the EAP should be modified to become a "need-based program", rather than restricted to only including low-income customers until the 2% cap is hit by any specific utility. PULP's research shows that most utilities are well underneath the 2% cap, while not every low-income customer that resides in their territory is currently enrolled in the EAP. Under enrollment is prevalent and requiring utilities to spend at the 2% cap would have significantly reduced low- and moderate-income arrears before the onset of COVID-19.

PULP is grateful for the Commission's recent Order establishing the Phase 1 COVID Assistance Program within the existing EAP and believes that the program will result in greater enrollment into the program and, but largely forgiving low-income household COVID related arrears, will improve the overall effectiveness of the existing EAP even before continued reforms. At the same time, our concern remains that the 2% cap will ultimately limit the number of eligible customers benefiting from the program. As a result, PULP advocates for the end of the 2% cap and continued eligibility reform and enrollment improvements.

Moreover, PULP believes that an annual review of the EAP is necessary to properly determine whether the State is meeting its goal that no household pays more than 6% of its income on energy bills. If the program's financial support is insufficient to meet that vital goal, then spending on low-income household energy efficiency and weatherization must also be increased. Assuring that this goal is met during the transition is essential. Entering the transition with only roughly 1/3 of income eligible New Yorkers in energy affordability programs is a recipe for failure at ensuring a just and equitable transition.

PULP also wants to echo the CJWG's comments in relation to assurance that LMI community solar savings do not conflict, interfere, or in any way prevent access to the other LMI energy savings programs such as the Home Energy Assistance Program. (CJWG's feedback, at 160). Instead, such savings must be in addition to other energy and utility cost saving programs for low-income households.

Finally, PULP supports the CJWG's identification that when the State designs incentives, tax credits may not be beneficial for most LMI consumers, and grants or "refundable tax credits" would be more likely to aid low-income households. (*Id.*) PULP has made this point in previous statewide affordability and other policy proceedings.

#### 4. Requiring Reporting on New York's Utilities' Applications for Funding from the Federal Infrastructure Investment and Jobs Act of 2021

New York State's regulated electric, natural gas, and water utilities should all be required to file reports with the Department of Public Service detailing what their plans are when it relates to applying for federal grants, loans, assistance, and programs under the Federal Infrastructure Investment and Jobs Act of 2021 ("IIJA") and whichever added funds may be made available under any 2022 federal appropriations. The IIJA makes available approximately \$550 billion in federal funding for infrastructure improvements including public utility infrastructure such as electric generation, clean energy transmission and deployment, electric vehicle infrastructure,

grid reliability, energy efficiency, and access to clean water and cybersecurity. New York’s utilities should all be applying for these funds to help New York meet our CLCPA targets. This will be one significant method for offset costs to ratepayers. And quite honestly, PULP believes that absent intensive federal support for New York’s decarbonization transition, it will be unaffordable for millions of New Yorkers.

#### 5. Energy Efficiency Programs and Greater Consumer Protections

PULP supports the CJWG’s call for a more expansive set of actions related to consumer protection including a "Utility customer bill of rights" that would include a safety net style guarantee of renewable energy to every household. (CJWG at 139). Moreover, PULP believes that energy efficiency measures are essential to helping LMI New Yorkers through the transition, as has already been recognized in initial programs such as “New Efficiency/New York” (“NENY”), among others. NYS should find every opportunity to offer energy efficiency audits and resources. One measure that would assist with this process is to require OTDA to share energy efficiency program information with every individual who applies for any financial assistance through the Agency, either in person or through MyBenefits.NY.Gov, or the Human Resources Administration’s (“HRA”) ACCESS HRA website. Moreover, directing the individual to their Regional Clean Energy Hub will also amplify the exposure and increase the likelihood of enrolling more New Yorkers in energy efficiency programs. A similar requirement would be entirely sensible to place upon the Division of Housing and Community Renewal (“HCR”) which is currently administering the Homeowner COVID Assistance Fund program (“HAF”) which will increase their contact with LMI households. Finally, such data sharing/referrals should also direct the individual(s) to their Regional Clean Energy Hub.

#### 6. Rate Making

The Department of Public Service and the regulated utilities need existing rate making models to be reviewed and reconsidered as the grid is being shifted to electrification (DSP at 104, 139, 161, & 173). Specifically, PULP has been advocating in several rate cases for “green rates” (aka “inclining block” or “inverse” rates) where we advocate for using market signals to get high energy users to pay more per unit used, which will incentivize them to reduce their usage.<sup>7</sup> Now more than ever, alternative rate designs for energy consumption must be discussed and implemented where possible in every rate case, to ensure that bill impacts are not increased upon low-income/fixed-income ratepayers.

The CLCPA and the State’s progressive climate goals require a transition to green/alternative rates that promote conservation of energy and lessened reliance upon increased fossil fuel demand. Additionally, reform of the energy utilities’ revenue decoupling mechanisms must be undertaken since they have strayed from their initial focus of de-linking the relevant utilities’ revenues from continued promotion of greater use of fossil fuels. The State should also review different types of rate structures for low-/fixed-/moderate-income households that can be

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<sup>7</sup> William Yates Testimony for PULP in Cases 20-E-0380 , 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 Electric/Gas Service at 23-24; William Yates Testimony for PULP in Cases 22-E-0064, 22-G-0065, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric/Gas Service, page 58.

explored in NYS, including Percentage of Income Payment Programs (PIPPs). In states including New Jersey and Ohio, PIPPs are used where payments are based on a percentage of household income and are consistent year-round. Additionally, the City of Philadelphia and the State of California (among other examples) have been using progressive rates for water, (such as “PIPPs”) which should also be explored.

## 7. The “Stranded Asset” Problem and Depreciation

The State’s focus on rapid decarbonization of the energy sector requires two added financial impacts not discussed above. First, in the area of electric systems there will be proactive large investments into the local distribution systems and long-distance transmission lines necessary to replace many existing lower-capacity elderly electric lines. “Mothballed” and higher emissions plants will also need to be replaced with zero and/or lower emission plants as the State rapidly transitions to a mostly and then completely zero GHG emission electric grid. However, in the area of natural gas, many billions of dollars of existing infrastructure will meet its physical and financial “end of life” as a result as the pivot away from an intensive hydrocarbon combustion economy and toward the future required by the CLCPA. The question then arises as to what must be done with the existing natural gas and other petrochemical infrastructure.

Under federal constitutional and state law, public utilities have the right to recover a reasonable return on investment in infrastructure that was purchased for use to supply vital services such as heat to consumers,<sup>8</sup> whether residential or business. And in fact, millions of New York’s households and businesses depend at this time upon a safe and reliable natural gas system and could experience significant strains upon an unplanned and overly rapid end of that system, such as was seen in microcosm in National Grid’s NYC and L.I. systems in the 2019 gas capacity crisis and moratorium.<sup>9</sup> Furthermore, in the absence of a statewide uniform and fully planned and implemented just transition process for low-/fixed-/moderate-income New Yorkers, large populations will be the last ones to leave the existing petrochemical/combustion systems and will bear the price of maintaining those systems virtually alone under existing law and policy. Consequently, while gas heating utilities must receive the remaining/undepreciated value of their existing systems used to serve customers despite pivoting away from using such systems in the future, the State must work intensively with those utilities to avert economic disruption from the early and expensive “forced obsolescence” of those systems. In a nutshell, thousands of well-paid middle class union jobs and billions of dollars of existing investments will be affected by early obsolescence of the existing natural gas system. In addition, the scaling down of that system will likely leave financially challenged and elderly consumers in extraordinarily difficult financial circumstances.

None of the challenges cited above implicate abandoning or even slowing down New York’s progress along the pathway to full decarbonization of our state economy. What is implicated however is we go into this with our eyes open and an unbreakable commitment to put

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<sup>8</sup> This primarily relates to “Cost of Service” regulated utilities, a category into which New York’s steam, gas and electric utilities fall.

<sup>9</sup> See, Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid., Case 19-G-0678.

the needs of our Greatest Generation and financially and medically vulnerable populations first, as we design the pathways to the success of our transformation.

## 8. Utility Ownership of Electric Generation Assets

PULP is supportive of clarifying under NYS Law and Commission precedent that utilities can own electric generation. For the record, PULP opposed the State's restructuring of the electric industry that divested the utilities of the electric generation. Having said that, for NYS to meet its Climate Action targets, every entity who can build lesser or least cost reliable and safe solar arrays or wind farms providing renewable energy at just and reasonable rates should be allowed to do so, including the regulated utilities and NYS government (i.e., the Thruway Authority to NYPA and such other government instrumentalities as maybe be necessary or convenient). While there are considerations concerning maintaining the State's policy of competition in the wholesale energy market, in the absence of private entities stepping forward to build significant new large renewable energy arrays, State action is necessary to achieve this vital and compelling public policy of decarbonization.

The Draft Scoping Plan recognizes that New York State has a policy that no New Yorker should pay more than 6% of their total income in energy bills (DSP at 132). However, in most service territories, the State has not achieved that target for ratepayers. *See Generally*, Direct Testimony of William D. Yates, CPA for the Public Utility Law Project of New York, Inc., cases 22-E-0064, 22-G-0065, p. 9. For example, in some service territories, this has resulted in Low-income households paying up to 9% of their income on utility bills, effectively 50% more of their income than the statewide policy that households pay no more than 6% of their income on energy bills. *Id.*

PULP foresees this problem growing. While renewable energy sources such as solar arrays and wind farms will over time dramatically lower the cost of energy, they are extremely capital intensive in initial phases. Nonetheless, expanding the scope of clean energy generation, specifically aimed at supporting low-income individuals, is one way to help ensure that all New Yorkers can enjoy the health and social benefits of clean energy, and eventually the lowered prices that will result over time. While the current programs the state has implemented, such as the NY Sun Solar Equity Framework, are essential to ensuring a just transition, these programs do not go nearly far enough to create a meaningful effect on the energy burden experienced by low-income individuals. Allowing any willing entity to construct renewable power generation assets, especially if those assets are geared towards reducing the energy burden of low-income households, could be a way to work with various industries, further incentivizing the localization and diversification of a grid designed that is designed to support all New Yorkers.

## C. Conclusion



PULP thanks NYSERDA for the opportunity to provide these comments to the Draft Scoping Plan. We hope that they prove useful in the Climate Action Council's review and efforts to establish the Final Scoping Plan. PULP will remain active in this process and offer our assistance as the State works to meet the important targets set by the Climate Act.

Sincerely,

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