

REBNY Testimony | June 10, 2022

The Real Estate Board of New York to The New York State Climate Action Council on the Draft Scoping Plan

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the Climate Action Council (CAC) for the opportunity to testify on the Draft Scoping Plan to achieve the goals of the Climate Leadership and Community Protection Act (CLCPA).

In 2019, New York State passed the CLCPA, nation-leading legislation that sets ambitious and necessary mandates to combat Climate Change, which includes an 85% reduction of greenhouse gas (GHG) emissions by 2050 and 100% zero-emission electricity by 2040. To achieve these bold targets will require constant coordination between the public and private sectors as well as a deployment of policies, programs, and infrastructure. To that end, the CAC is tasked with developing a Scoping Plan that outlines those strategies that will lead New York to a carbon neutral future, which it released a draft of at the end of 2021.

The Draft Scoping Plan outlines a holistic approach to achieving the mandates set forth in the CLCPA. Framed around the guiding principles of climate justice, just transition, and public health, it proposes unique strategies for decarbonization for each sector, including buildings, which account for 30% of economy wide GHG emissions statewide and more than 70% of GHG emissions in New York City. Decarbonizing New York's buildings is an imperative if we are to reach our climate goals.

To achieve meaningful emissions reductions will require a multifaceted approach, including but not limited to investment in energy efficiency, shifting to zero emission energy inputs, and investment in new technologies that can help decarbonize building development and operations. The Draft Scoping Plan recognizes the complexity of bringing buildings into compliance with the CLCPA's mandates. Its carbon roadmap to achieve carbon neutrality for buildings includes a comprehensive array of regulatory and programmatic suggestions, which include but are not limited to:

- Adopting advanced codes for highly efficient, all-electric and resilient new construction;
- Requiring energy benchmarking and disclosure;
- Adopting standards for zero emissions equipment and the energy performance of existing buildings;
- Expanding public financial incentive;
- Expanding access to public and private low-cost financing; and

- Investing in next generation technologies for decarbonized buildings.

REBNY appreciates the CAC's approach to creating a roadmap to decarbonization. The Draft Scoping Plan delineates the challenges for different segments of the market and building typologies. The suggested decarbonization strategies demonstrate an understanding that to achieve carbon neutrality real estate cannot be subject to a one-size fits all model and that different buildings will necessarily work toward their mandates at different timelines.

What follows is more targeted review of some of the specific recommendations made in the Draft Scoping Plan:

Adopting advanced codes for highly efficiency, all-electric and resilient new construction

REBNY agrees with the CAC that buildings will need to reduce the use of on-site fossil fuel combustion in order to achieve our shared climate goals. Such a shift needs to be done methodically so as to minimize disruption to residents and tenants, allow for proper capital planning, ensure there is availability of low to zero carbon energy alternatives as well as all-electric building technology to meet the needs of the market across the state's seasonal and varied climate. For these reasons, we support the Draft Scoping Plan's approach in distinguishing between new construction and existing buildings. REBNY believes that any policy that significantly curbs on-site fossil fuel combustion in buildings should first begin with addressing ground-up construction, since there are fewer operational constraints than with existing buildings.

Moreover, REBNY thanks the CAC for suggesting that eliminating on-site fossil fuel combustion in new buildings be phased-in and at different timeframes for different building scales.

REBNY believes a phased-in approach for addressing this issue is appropriate and has numerous advantages:

- It reflects the reality that heat pump technology is already cost-competitive and proven in small buildings. As electric heat pump systems are less proven and more costly for taller buildings, this phase in would give time to ensure product manufacturers provide high quality cost competitive systems for these buildings. This would help to avoid buildings utilizing inefficient electric systems, such as resistance heating and electric boilers, that would quickly overburden the electric grid if used widely and allow for more efficient and reliable electric heat pumps to become more readily available for large scale buildings.
- It would allow time for a new performance-based energy code to come into effect and more closely follow the compliance periods set under New York City's Local Law 97 to ensure efficient construction.
- It would provide additional time for on-site energy storage systems to be approved in New York City so that buildings could have the resilience and redundancy needed to protect against electric blackouts or brownouts.
- It allows for the electrification of buildings to better align with the greening of the electric grid, which would allow for a much more comprehensive approach to eliminating fossil fuel emissions.

Rather than pursue an all-electric building requirement, however, REBNY believes it is vital that the Scoping Plan focus on removing on-site fossil fuel combustion in new buildings rather than require new buildings to be all-electric. With significant investment and innovation underway in low- and no-carbon fuels, it is possible that in the coming years new buildings could utilize energy sources other than electricity and have no on-site emissions. An all-electric requirement would foreclose this innovation and leave buildings vulnerable to the reliability and cost of the electric grid. The potential to use very low or no-carbon fuels would help protect the resiliency and reliability of buildings by creating multiple emissions-free energy sources that a building could utilize.

Requiring energy benchmarking and disclosure

The Draft Scoping Plan suggests that the State adopt energy benchmarking and disclosure requirements. REBNY strongly supports this initiative.

It is imperative that both owners and State regulators understand the energy demands and performance of New York's buildings. In New York City, large buildings have been subject to benchmarking and reporting requirements since 2009. That individual building data has helped owners analyze their properties and plan for improvements to their operations and investment decisions. Moreover, the aggregate data allows regulators to know how different segments of the building stock are performing and use that information to set appropriate standards.

In order to be able to manage and effectively reduced the carbon emissions from New York's building stock, we need to measure it. For that reason, we support the proposal of implementing a statewide mandate for benchmarking. However, it is important that any regime implemented throughout New York not upend existing successful local regulations. REBNY would encourage the CAC to model the benchmarking requirements on those set in New York City. The local standard has proved effective for more than decade and using it as the basis for the statewide standard would avoid any duplicative effort and undue cost that could result from incongruent reporting requirements.

Adopting standards for zero emissions equipment and the energy performance of existing buildings

The Draft Scoping Plan's approach to decarbonizing existing buildings is two-fold: 1) require the sale and installation of energy-efficient and zero emission new equipment for space heating and hot water, when replacing equipment at the end of useful life, and 2) require efficiency upgrades for large buildings through a building performance standard.

REBNY appreciates the CAC's multipronged approach. The implementation of any policy decarbonizing existing buildings must be done in such a way as to balance multiple competing needs including electric grid reliability and the deployment of renewable energy in different regions of the state, the ability of all-electric building technology to meet the needs of the market across the seasonal and varied climates in the state, the cost to New Yorkers utility bills, and emissions reduction.

The Draft Scoping Plan's strategy to phase out carbon emitting equipment and building systems is correctly phased. It suggests:

- Prohibiting new gas and oil service be provided to existing buildings in 2024;
- Prohibit gas/oil replacements at end of useful life of heating and cooling and hot water equipment in single family homes and low-rise multiple dwellings beginning in 2030;
- Prohibit gas/oil replacements at end of useful life of heating and cooling and hot water equipment in larger residential and commercial buildings beginning in 2035; and
- Prohibit gas/oil use in large fuel burning equipment in 2035.

REBNY supports the intention and believes the CAC's suggestions have merit. Granting buildings of different typologies and scale the requisite time to replace their equipment and infrastructure is pragmatic, allowing for buildings to plan for their unique challenges.

There may be some resistance to the proposed timing since the prohibition of replacing existing oil and gas systems would not take place until 2030 at the earliest. However, the timeframes outlined in the Draft Scoping Plan are reasonable provided that such mandates are coupled with public policy that help buildings afford these added costs. Further, it is essential that any mandates for decarbonizing existing buildings recognize the electric grid's reliability and the deployment of renewable energy. The times outline in the Draft Scoping Plan conform with the CLCPA's targeted dates for expanding availability of renewable electricity and its resilience plans for the grid.

In addition, it is essential that such a policy grant buildings flexibility to adapt their systems according to their own operational needs and capital planning cycles in order to mitigate the disruption and financial burden on existing residents and tenants. To replace many of the existing oil and gas building systems will require ripping out the interiors of the properties and in some cases may necessitate abatement of hazardous materials like lead and asbestos. Doing so will temporarily displace some residents and likely increase costs of rent, barring any public financial support. Allowing a more protracted timeframe for this work will ease the stress of the transition on New Yorkers' lives.

It is also important to note that many buildings will not wait until the proposed timeframes to begin that work. The real estate industry is acutely aware of the need to decarbonize and the transition to zero carbon energy inputs. Buildings are already planning for and implementing the shift.

However, REBNY again encourages the CAC to not dismiss the potential future of low to no-carbon fuels or district systems, such as the Con Ed district steam system, to ease this transition. There is ample research and investment in carbon-free fuels that could be run through existing building infrastructure. Doing so could be a path to powering New York's buildings and having no on-site emissions, and it would mitigate the previously mentioned disruption and cost burden on New Yorkers.

Beyond regulating the equipment and systems in buildings the Draft Scoping plan suggests the State require efficiency upgrades for large buildings through a building performance standard. This would require the State to pass legislation that establishes efficiency standards for appliances and equipment that are exempt from federal preemption. It also proposes the State adopt an energy

performance standard for existing commercial and multifamily properties larger than 25,000 sf beginning in 2030 and could begin phase-in in 2027.

While REBNY appreciates the intent of this proposal, we encourage the CAC to consider the challenges of such a policy, which include competing local regulatory requirements, the need for flexibility to account for building differences – typology, scale, use type, density, and occupant demands – as well as the cost of implementation on New Yorkers.

In New York City, buildings 25,000 sf and larger are subject to LL97, which imposes strict carbon caps beginning in 2024 and becoming more stringent in 2030 and beyond. Covered buildings have already started planning their compliance through capital improvements and other decarbonization pathways. It is imperative that any building performance standard be congruent with this regulation. REBNY appreciates that Draft Scoping recognizes this potential friction between local and state regimes and suggests that any energy performance standard be informed by benchmarked data and align with LL97's requirements. If such a building performance standard moves forward, New York State must ensure consistency between the State framework and New York City, otherwise building owners in New York City may be left with conflicting policies that may well undercut our shared climate goals.

Furthermore, any building performance standard needs to recognize the diversity of the building stock and its varied energy demands. Any standard should account for the needs of different occupancies and establish the appropriately tailored requirements for each building, normalizing factors including density, hours of operations, and the specific type of use of the building.

In addition, it is important the State consider different municipalities' varying abilities to implement and enforce a statewide energy standard. Local authorities across the state have divergent government structures as well as different resources available to create an enforcement regime. Whatever performance standard and related reporting requirements the State decides to pursue must be crafted in a way that allows each municipality to adopt and implement the same program.

Finally, the improvements necessary to achieve any building performance standards will be expensive, possibly out of reach for many owners, and potentially disruptive to existing occupants and residents. Therefore, such a policy necessitates financial support and technical assistance for buildings to come into compliance. The State will need to develop a suite of programs to support capital improvements to existing buildings, particularly residential. The work required to decarbonize these buildings is substantial and will impose significant costs on residents whether they are renters, owners, or shareholders. A wide range of programs – beyond what is offered by existing programs – will be needed to help these buildings make such investments.

Expanding public financial incentive

The Draft Scoping Plan recognizes that the scale of the task at hand – decarbonizing the economy – is monumental and will require significant investment. For buildings, this means providing help that can assist millions of homeowners, shareholders and owners of cooperatives and condominiums, and building owners make the systems and efficiency upgrades their properties will need for New York to

reach its goal of a carbon-neutral economy. Even if the amortized expense of property improvements can be cost-effective over their lifecycles inclusive of energy cost savings, the upfront capital required can still be a significant barrier to many building owners. REBNY supports the Draft Scoping Plan's commitment to expand financial assistance to New York's building owners to ensure they can afford to implement the improvements needed to decarbonize. This is particularly important for single- and multi-family homes as well as low to medium income housing.

The scale of capital needed is significant and will require New York to leverage all its available sources. The Draft Scoping Plan identifies traditional supply through State tax revenue, ratepayer funds, and federal grants as targeted options. However, given the unprecedented nature of the challenge, New York will have to develop creative financing mechanisms, particularly ones that do not rely on rent or common charge increases. REBNY encourages the State to explore all available options, including tax incentives and abatements, encouraging private investment and directing local resources toward interventions that move buildings toward decarbonization.

New York State recently showed the potential value of private investment in achieving our shared climate goals with the creation of the Tier 4 Renewable Energy Credit (REC) Program, which will increase the penetration of renewable energy downstate through the development of desperately needed transmission lines. A notable feature of the Tier 4 program includes a mechanism to allow voluntary buyers such as building owners to purchase Tier 4 RECs from NYSERDA so that these costs are not placed entirely on all ratepayers. This program design ensures that market participants who have the most demand for such credits can pay for them directly. The CAC should encourage these sorts of private investment in decarbonization efforts wherever possible.

Beyond looking to private capital, the State should encourage local authorities to designate more funds to achieve the goals set forth in the CLCPA. For example, in New York City penalties resulting from LL97 are currently scheduled to be paid to the City's general fund with no obligation for the funds to be used to support building decarbonization. This is a missed opportunity to drive further investment into buildings and should be corrected.

Several proposals have been put forward to do so, including earmarking those penalty funds for specific purposes or allowing owners to make alternative compliance payments that would be used to improve the performance of buildings with below market rate units. These options should be carefully explored to determine how best to ensure that the law results in emission reductions not penalties. The Draft Scoping Plan should encourage such action from local authorities.

Investing in next generation technologies for decarbonized buildings

The Draft Scoping Plan calls for support of next generation building decarbonization solutions, including improved HVAC systems, building envelopes, heat recovery and ventilation, decarbonized district steam, and domestic hot water heat pump technology. If we are to achieve the mandates in the CLCPA the available technology must continue to improve so building owners and managers can optimize operations and minimize energy use by installing affordable, climate resistant, zero-carbon systems.

REBNY strongly supports the Draft Scoping Plan's commitment to investment in next generation technology. REBNY annually hosts a PropTech Challenge that focuses a wide range of stakeholders at the intersection of the technology and real estate industries on solutions to help solve the greatest challenges that cities are confronting in the 21st century. This year, the Challenge, which was cosponsored by NYSERDA and the Commercial Observer, focused on getting to Carbon Net-Zero. Recognizing technology interventions for achieving decarbonization can take endless forms, REBNY crafted the Challenge around four primary categories - Carbon Measurement, Verification, Reporting, & Accounting, Building & Tenant - Energy Management & Optimization, Energy Storage, Embodied Carbon & Carbon Capture. To help push the technological innovation, we believe there needs to be continued public-private partnership and significant investment.

One area briefly identified in the Draft Scoping Plan that deserves more consideration and investment is decarbonization of district steam systems, an issue which has largely been missing in the public conversation. District steam is an important source of energy in many commercial, residential, and City buildings in New York City but is currently generated from fossil fuels. While New York State has established clear directives to decarbonize electricity generation and begun implementing policies to do so, no verifiable plan exists to reduce emissions from the district steam system. REBNY appreciates the CAC's attention to the role of district steam and believes greater attention to the strategies to decarbonize this system is needed as a decarbonized district steam system may be able to play an important role in helping convert existing buildings to less carbon intensive energy sources (including on-site combustion) over time.

Thank you for the consideration of these points.

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