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TO: Members, Climate Action Council

FROM: Ken Pokalsky

SUBJECT: Comments on Draft Scoping Plan

DATE: 7/1/22

Introduction

First and foremost, we want to express our appreciation to the members of the Climate Action Council, the members of the various CAC work groups, and the staffs of the Department of Environmental Conservation, NYSERDA, the Public Service Commission, and others that contributed to the Draft Scoping Plan. The Draft Scoping Plan and its related documents are a product of an incredible amount of work, dealing with a wide range of highly complex, interconnected challenges. Regardless of any comments and criticisms we may offer, we do not question the good faith effort put forth by a diverse group of New Yorkers to assemble this draft proposal for achieving CLCPA objectives.

It would be difficult to overestimate the task at hand. For better or worse, the CLCPA mandates the design of a novel statewide energy system and the restructuring of many aspects of the state's economy. While the implementation plan will employ, especially in the short term, a number of "proven technologies," these technologies will have to be deployed to a degree not previously attempted. And while investments in these and emerging technologies will present economic development opportunities for the state, CLCPA implementation presents enormous uncertainties regarding the capabilities and availability of new technologies (and the skilled workforce necessary for their operation), their direct costs, and the opportunity costs of shifting significant resources into the redesign of our entire statewide energy system.

Importantly, more and more businesses are adopting and implementing sustainability programs, in recognition of the need to reduce resource consumption (including energy) and reduce environmental impacts (including greenhouse gas emissions.) These actions recognize the importance of environmental stewardship, as well as expectations of investors, customers and employees.

These measures can also be "good business," by reducing costs, improving process efficiencies, and meeting market expectations.

But increased regulatory demands, especially those that result in a significant departure from a "level playing field" among competitors, will undoubtedly have negative impacts on the state's businesses and overall economy. And the commitments in the CLCPA, and the proposals in the Draft Scoping Plan, go well beyond those measures being advanced by most other states and by other nations with which New York businesses compete.

It is essential that the state maintain a careful balance between meeting the CLCPA mandates and maintaining a competitive economic environment. Likewise, the Administration and Legislature needs to pay close attention to environmental achievements and implementation costs, to assure that CLCPA implementations are effective, cost-effective and affordable. There also needs to be a willingness among policymakers to make necessary adjustments to the CLCPA and its implementation plan, and to accommodate significant unforeseen circumstances.

One major concern is that the CLCPA, as currently structured, seems to mandate an "all possible actions" approach to reducing greenhouse gas emissions regardless of the cost or cost-effectiveness of these actions and mandates. We say this because, while the CLCPA mandates the DEC to adopt regulations for the timely achievement of statewide greenhouse gas emissions reductions, the CLCPA only requires the consideration of equitable impacts and cost minimization (see § 75-0109.3(a)), in effect making affordability and cost-effectiveness of CLCPA implementation measures a consideration, not a requirement. In comparison, aspects of this regulatory charge are more definitive with regard to meeting the CLCPA emission reduction targets, in saying that such regulations ". . . shall . . . ensure that the aggregate emissions of greenhouse gases from greenhouse gas emission sources will not exceed the statewide greenhouse gas emissions limits established in section 75-0107 of this article."

The concern about emissions and economic leakage, addressed in both the CLCPA and the Draft Scoping Plan, are not just theoretical, but a very real potential impact of excessively strict or costly environmental and energy mandates, coupled with a wide range of additional factors – taxes, labor laws, population changes – that impact a state’s economic climate. New York’s share of U.S. manufacturing jobs and manufacturing output has been falling for decades, and while that trend has many causes, there is no doubt that much of that production activity has relocated to less carbon-efficient jurisdictions than New York State.

These comments, and our ongoing engagement with the CAC, state agencies, the state legislature and other stakeholders, are focused on assuring an effective, efficient, affordable plan to meeting the state’s renewable energy and emission reduction goals, assuring a more healthy state environment, and assuring a more health state economic climate for the benefit of all state residents.

We look forward to continuing to work with all CLCPA stakeholders toward these goals.

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DRAFT SCOPING PLAN COMMENTS/PRIORITY ISSUES

Reflecting our large and diverse membership, The Business Council will be commenting on a diverse set of major issues presented in the Draft Scoping Plan (DPS), with a focus on provisions with broad impact on Council members, including proposals regarding industrial operations, emissions from buildings, the transportation sector, waste management, and “economy-wide measures” such as carbon assessments. Likewise, we will be indicating our concurrence and support of significant comments and proposals offered by various Business Council members and other organizations with which we work, in instances where those organizations have used their considerable expertise to provide detailed comments and recommendations on issues of broad interest to our members.

As a starting point, state policymakers need to recognize the state’s significant progress to date. Even prior to adoption of the CLCPA, New York State was a national leader in clean energy and environmental protections. Pre-CLCPA, New York was already the nation’s most carbon-efficient state economy, with our emissions per dollar of economic output only 43 percent of the national average, while on a per capita basis, we had the sixth lowest carbon emissions of any state. About 60 percent of our electric power generation was from non-carbon-emitting sources, and another 36 percent from low-emitting natural gas. At the same time, New York has struggled to keep pace with national levels of economic development and job growth, especially in sectors such as manufacturing that – as discussed in the DPS – are especially sensitive to increasing energy prices.

Achieving the CLCPA’s ambitious carbon reduction and renewable energy deployment targets will pose significant technical, financial and political challenges, and will take careful planning to assure both effective and affordable implementation.

Many businesses, and numerous Business Council members, have already adopted and are implementing sustainability programs that include, among other measures, reductions in greenhouse gas emissions to be achieved from changing products, improving production efficiency and other aspects of business operations. In this respect, the business sector can be seen as being generally supportive of the state’s CLCPA targets. The Business Council is supportive of the competitive marketplace to furnish programs which reduce carbon, and in the process reduce costs and promote customer satisfaction.

Even so, increasingly, businesses and other stakeholders are raising concerns that the transition required by the CLCPA will have significant direct and indirect costs, that those costs will be borne by a wide range of New York residents, businesses and institutions, and that those costs – especially in the near to mid-term – will adversely impact the state’s economic competitiveness.

Unfortunately, even though we are more than two years into the CLCPA implementation planning process and the Climate Action Council has issued an expansive draft scoping plan, the state has still not produced any meaningful

assessment of the impact of planned and expected expenditures on renewable generation, transmission, distribution, and storage infrastructure will have on power rates.

To address those concerns, The Business Council is supporting several key principles as New York moves forward with its CLCPA planning and implementation efforts:

- The state needs to be more upfront regarding scoping plan implementation costs, and the overall clean energy and net zero carbon economy transition costs. These costs are as basic as the impact on electric power costs resulting from known and planned investments in renewable energy resources. Without such information, businesses may simply assume “worst case scenarios” and make investment and re-investment plans accordingly.
 - o Each specific action included in the final scoping plan, whether an explicit recommendation for implementation or a potential action item, should include an assessment of its direct costs, its cost-effectiveness (in terms of net costs per unit of GHG emissions reduced), which entities will incur these costs (both by category and number), the current state of technology for achievement or implementation, and recommendations for necessary state incentives if applicable (by type, amount and eligibility).
 - o Given the number of action items under consideration, the wide range of entities that would be subject to new compliance mandates, and the varying levels of financial capabilities of such entities, this type of assessment of implementation options will provide decision-makers with a better understanding of the relative feasibility and benefit of competing options. It would allow decision-makers to adopt a plan that assures that early actions will be both affordable and impactful, and to prioritize among action items if affordability concerns preclude complete adoption of all recommendations.
- All fuel and technology options need to be considered in the final implementation plan- including those for the development of zero emission dispatchable technologies, use of existing gas infrastructure, in-state produced biomass and the pursuit of still-emerging technologies (e.g., green hydrogen and carbon capture) -- especially at this early stage in the CLCPA implementation process.
 - o We refer to and support [National Grid's “Our clean energy vision” report](#), which makes a compelling case for achievement of a fossil-free natural gas system by the CLCPA’s net zero emission target date of 2050, utilizing renewable natural gas and green hydrogen. This is part of a multipart strategy that includes accelerated energy efficiency improvements to buildings with measures to reduce peak gas and electric demand and adoption of more aggressive building codes for new buildings; investments in hybrid electric-gas heating systems; and targeted electrification of current gas-based uses and innovative approaches including networked geothermal heating and cooling, and assistance to help current oil and propane customers to convert to heat pumps.
 - o A similar approach is laid out in [National Fuel Gas’ “Pathways” proposal](#), which proposes a four-part approach to emission reductions including a continued focus on energy efficiency; further reductions in utility emission through reduction in fugitive methane emissions. Investments in system modernization and safety, and a commitment to substantial reduction of delivery system emissions; decarbonization of energy sources through the use of renewable natural gas and hydrogen-enriched natural gas, use of industrial local hydrogen networks, carbon capture and storage, and community geothermal; and leveraging the existing energy delivery system to serve hard-to-electrify customers with low-carbon options, mitigate peak electricity demand, avoiding more substantial infrastructure build-out and assuring a reliable and resilient state energy system.
 - o The Business Council is a member of the “New York NY Clean Fuel Standard coalition, and we support their scoping plan comments that illustrate how the state can achieve [transportation sector] emission reductions using “a clean fuel standard that reduces the average carbon intensity

of fuels as the transition to zero emissions vehicles proceeds” and “advanced clean fuels will play a role in decarbonizing hard-to-electrify segments of the transportation sector.”

- The state should identify measures that can be readily achieved in the short term, that are cost-effective in terms of cost per unit of GHG emission reductions, that are affordable in terms of absolute and net costs, and that will result in limited economic disruption but meaningful emission benefits.
 - o These measures include but are not limited to continued investments in energy efficiency, a well-designed plan to promote accessible EV charging infrastructure, and adoption of a clean fuel standard, among others.
 - o In addition, the state should promote emergent, but not-yet-fully “mainstream” technologies through state financial and technical assistance, as it is doing with regard to a proposed northeast regional hydrogen hub, and with technologies such as RNG & carbon capture.
- It is essential that the state avoid mandates and restrictions that will contribute to the out-of-state leakage of economic activity, jobs and – most significant – carbon emissions. New York remains a high cost, highly regulated state, and CLCPA implementation raises the specter of significant additional restrictions and mandates on both the private and public sectors. Imposing excessively costly or technologically challenging mandates that are not required in other jurisdictions will result in a loss of investment and jobs in New York and will likely result in net increases in carbon emissions.
- Finally, the Administration and legislature need to maximize the in-state economic development opportunities stemming from our significant investments in energy technology, facility and building upgrades, and other areas. As part of this effort, the state must make its business climate – including energy costs -- more competitive for industrial investment and manufacturing job growth.

The Business Council represents businesses in virtually all economic sectors that will be impacted by the CLCPA. Importantly, we continue to urge our members to engage in the CLCPA implementation process. Businesses need to bring their expertise and experience to the table, and provide fact-based analysis and recommendations, with the goal of achieving a workable, productive path to meeting CLCPA targets.

Costs/Benefit Calculation, Costs of Compliance and Distribution of Costs

In Environmental Conservation Law (ECL) §75-0103, which sets up the climate action council, the CLCPA directed the CAC, in developing its scoping plan, to evaluate the “total potential costs” of its plan (as well as its economic and non-economic benefits) and to quantify “the costs of implementing proposed emissions reduction measures.”

While the Draft Scoping Plan provides few specifics on the cost of implementation measures, it reports on macro-level models of the cost and benefits of multiple compliance scenarios, each of which projects that benefits will significantly outweigh implementation costs, with benefits including public health benefits from improved air quality, increased active transportation, and “energy efficiency interventions” in homes generating health benefits.

However, this analysis compares the costs of implementing this state specific scoping plan with benefits, including estimates of avoided economic damage from climate change at up to \$250 billion, that would require actions beyond those proposed in this scoping plan to achieve.

Specifically, the Draft Scoping Plan (DSP) (see page 80) states that “net benefits range from \$90 billion to \$120 billion. . . “adding that “reduced GHG emissions *avoids the economic impacts of damages caused by climate change* equaling \$235 to \$250 billion. The combined benefits range from \$400 billion to \$420 billion.” [Italics added.]

This provision of the DSP is misleading, as it does not actually quantify the avoided economic damage of climate change. Instead, this net benefit calculation is based on the “value of carbon” as determined by DEC, with that value multiplied by projected tons of GHG emission reductions producing the calculation of avoided damages.

Given that New York's total GHG emissions are estimated at 0.5 percent of worldwide emissions, even full and timely implementation of the DSP and achievement of the CLCPA's carbon emission reductions will not have a measurable impact on the rate of global temperature change, and while further emission reductions in combustion-related emissions will have additional public health benefits (mostly downstate), full CLCPA implementation will not have any measurable impact on reducing the adverse economic impacts of climate change.

We have several recommendations. First, the Final Scoping Plan should more clearly explain how it calculates the net benefits to New York, its businesses, and its residents of CLCPA implementation. It is the New York State businesses and residents that will be paying the cost of implementation. The benefit should be calculated to show their return on their investment. Second, it should be clearer in explaining the potential impact on global GHG emissions, and on the adverse impacts on climate-based economic damages to New York of full and timely implementation of the CLCPA. The CLCPA emission reduction and renewable energy mandates are not dependent on cost/benefit outcomes, however, importantly, the PSC can adjust the renewable energy targets to maintain reliability and affordability, and the DEC similarly, should be able to protect consumers and businesses on the road to the 2050 target. Nonetheless, it is essential that New York lawmakers, businesses and the general public have realistic and accurate assessments of both the impacts and costs of CLCPA implementation to its residents and businesses.

The draft scoping plan also applies an analytic framework that estimates \$140 billion in annual New York State energy system expenditures, including capital expenditures and fuel costs, equating that figure to 8.9 percent of gross state product. This estimate also shows that a significant share of that amount, including \$30 billion of \$50 billion in fuel costs, is leaving the state, most significantly due to out-of-state purchases of fuels.

In part, the DSP's economic impact study discusses the effect of redistributing these annual expenditures to achieve the state's renewable energy and energy efficiency objectives. As such, this framework may be used to illustrate how changes in both capital and non-capital expenditures could result in significant emission reductions while not significantly changing the total level of annual expenditures. If demonstrated to be true, this approach could help illustrate the economic feasibility of CLCPA implementation.

However, a major shortcoming of the DSP is an inadequate discussion of implementation costs, especially regarding the distribution of those costs across and with sectors. Nor does it provide detailed recommendations on mechanisms to offset costs and/or generate necessary resources from non-energy-related sources.

The lack of such cost information is a fatal flaw of the DSP, as it is impossible for the CAC, regulatory agencies, the state legislature, impacted businesses, or members of the public to make informed decisions regarding specific CLCPA compliance proposals without an assessment of implementation costs. Further, The Business Council is concerned that continued, disproportionate reliance on utility customers to fund CLCPA compliance measures will result in an exodus of production, capital investments, and jobs from New York to other states and countries, leading to economic harm to the state and, potentially, increased emissions.

We have several recommendations to address this significant shortcoming of the DSP:

- As a first step, the CAC should compile a detailed assessment of all existing funding mechanisms and programs that support renewable energy, energy efficiency, energy storage and transportation, GHG emission reductions and related activities that will be a component of CLCPA implementation. This should include all such programs regardless of their legal basis, and include statutory provisions, Public Service Commission orders and directives, NYSERDA contracts and others. For each such program, this assessment should identify: its legal basis; its source and amount of funding on a year-by-year and aggregate basis; the use of program funds to date; any expected or imposed limit on the program's duration; the mechanism and sources of such funds, and an assessment of the degree to which the funding-raising mechanism impacts different economic sectors; and the cost-effectiveness of these programs to date in terms of costs per unit of GHG emissions reduced, and the cost/benefit to New York State residents and businesses.
- The CAC should prepare a detailed, ten-year implementation plan that identifies, on an annual basis, specific statutory or regulatory requirements to be implemented each year pursuant to the scoping plan. The plan should include specific recommendations regarding the need for state financial assistance for each such requirement (as applicable), with those recommendations addressing eligibility, levels of funding, and other proposed criteria. This plan should also require periodic, preferably annual,

assessments to evaluate progress and make changes based on reliability concerns, affordability concerns, technological innovations and related factors.

- This implementation plan should address the extent to which proposed requirements could be supported by existing funding mechanisms, identify likely gaps in necessary state assistance, and propose recommendations for “economy-wide measures” to provide additional necessary state financial support.

Integrated Implementation Timeline and Budget

While the draft scoping plan mostly presents its proposed CLCPA implementation measures on a sector-by-sector basis, most businesses (and most other entities, including households, government and institutions) will be impacted by multiple categories of CLCPA implementation mandates.

Further, while significant work went into the development of the draft scoping plan and its support documents, and while some sections (e.g., transportation sector, buildings sector) provide detailed, specific policy recommendations and timetables, other sections are far more general in their discussion of potential future actions. Taken as a whole, the draft scoping plan can hardly be considered a comprehensive blueprint for moving forward toward the goal of achieving the CLCPA carbon reduction and renewable energy mandates. For a plan that will restructure how the entire state will operate and function, the plan provides limited workable direction to reach targeted mandates. Outcomes need to drive any plan, not arbitrary scheduled mandates.

This shortcoming of the DSP has several significant, practical impacts. For instance, the DSP fails to provide an adequate analysis of the interaction between sector-specific measures, e.g., the impact on the transition and expansion of the electric grid to accommodate building electrification, expanded EV charging, and other major increases in electric power use.

It also fails to give clear direction to the state legislature as to necessary additional statutory and funding measures on a year-by-year and session-by-session basis, and as a result, we expect to continue to see the legislature acting on emission reduction and renewable energy policy legislation based more on political influences than their level of priority in implementing a coordinated, effective, affordable implementation plan. Most significantly, the legislature needs guidance as to the allocation of available state resources, and the need to generate additional resources, in order to achieve the emission reductions, renewable energy and social equity goals set forth in the CLCPA.

Finally, the DSP also fails to give clear “signals” to the regulated community, of which most members – as discussed above – will be considering multiple compliance obligations impacting their business practices, buildings, transportation needs of employees, products and materials, and others.

We strongly recommend that the Final Scoping Plan include, in addition to longer term goals and options, an integrated implementation plan for, at minimum, a ten-year period that includes, for each year of that planning period, specific CLCPA action items and for each such action item, an estimate of their renewable energy and/or carbon emission reduction impacts, their costs, and how those costs will be addressed by private, public or a combination of private and public resources. This approach will allow state decision-makers to compare the relative cost and impact of compliance options and take a more holistic approach to shaping both authorizing legislation and funding appropriations.

In addition, timelines and budgets must be managed if they are to work. Any plan must assign oversight and management to entities identified to carry out the plan and report on accomplishments. The CLCPA’s directive that the CAC update its Final Scoping Plan “at least once every five years” is insufficient. More frequent, and at least annual, progress and impact assessments should be required and implemented.

Issues Impacting the Industry Sector

We have heard considerable concerns from our manufacturing members about the potential adverse impacts from CLCPA implementation. These include the potential mandate for shifting from gas to electric process heat in applications that would result in excessive costs (if even feasible) and an impairment of a facility’s economic competitiveness, concerns about the lack of commercially viable electric power-based production equipment, the overall impact of CLCPA compliance measures on electric power rates, among others.

Industrial Sector Emissions Reductions - In several instances, the Draft Scoping Plan recognizes the challenge of imposing regulatory mandates for GHG emission reductions from industrial sources, citing the non-homogeneous nature of industrial operations and the potential for economic and emission leakage due to adverse impacts on cost-sensitive manufacturing. As such, the DSP expects that industrial reductions through 2030 will come from energy efficiency and limited electrification of low temperature processes, fuel switching and indirectly from further decarbonization of the power network. We support this approach, given that GHG emissions from industrial process sources account for just 0.65 percent of statewide GHG emissions (2.21 mmtCO₂E of a statewide net total of 338, according to DEC's "2021 Statewide GHG Emissions Report," with produce use accounting for an additional 6.1 percent of statewide GHG emissions, and industrial fuel consumption 2.7 percent.

The DSP further suggests that longer term (through 2050) reductions from the industrial sector may come from alternatives for high-temperature process energy including green hydrogen or other low carbon fuels, plus carbon capture and storage.

We agree with the DSP's deferral of any new industrial process emission regulatory regime, focusing instead on emission reductions related to manufactured products (i.e., hydrofluorocarbons and other substances used as substitutes for ozone depleting substances), and providing incentives for "early reductions" of process emissions.

Without a need for immediate or short-term industrial process source emission reduction mandates, the state has additional time to address the issue of establishing criteria for, listing and proposing potential emission regulations for "energy intense trade exposed" (EITE) industries in carbon strategies, including regulatory emission limits, cap and trade, emission or fuel assessments, financing or other incentives, and others. As directed by the CLCPA, these approaches need to include mechanisms to limit emission leakage. They must also include exposure to both domestic and foreign competition, not just domestic competition. The DSP is woefully inadequate in its treatment of EITE issues, failing to advance a specific definition of EITE industries and specific measures to mitigate costs to EITE industries in an effort to minimize economic and environmental leakage (which should be a major focus of the CAC).

Obviously, if manufacture does not take place in New York State it will take place in some other location. In many cases, that location will be jurisdictions such as China or India with their manufacturing sectors highly reliant on less efficient coal fired steam turbine generators.

We are concerned that other regulatory mechanism could be used as a "backdoor" means to regulate industrial process emission. As example, legislation (S.9405/A.10439) approved in the 2022 session, but not approved, provides the Department of State and NYSERDA to adopt energy efficiency standards not just for specific categories of equipment set forth in Article 16 of the Energy Law, but also for any other category of "product" for which it is determined that such standards would promote reduced energy use or GHG emissions. While this could be used to set efficiency standards for "generic" equipment used in industrial processes (current legislative proposals would cover "industrial air purifier", "pressure regulator", "and "commercial and industrial fans and blowers"), most industrial processes should not be subject to generally applicable energy efficiency standards adopted through the state's building code.

We also note that the CLCPA (§75-0109), in directing the DEC to adopt regulations to ensure compliance with statewide GHG emission limits, among other things those regulations should "encourage early action to reduce greenhouse gas emissions and co-pollutants." Early reductions could be promoted through regulations governing the use of early reductions as emission offsets to be used by entities subject to explicit reduction limits. An alternative, which would require legislative action, would be an enhanced investment tax credit (separate and distinct from the existing Excelsior Tax credit program) that would provide refundable credits for significant capital investments that produce GHG and co-pollutant emission reductions.

Alternative Compliance Mechanisms – Alternative Compliance Mechanisms - While "command and control" mandates on industry might be years into the future, the DSP – reflecting provisions of the CLCPA § 75-0107 – recognizes the cost and technological challenges that regulatory mandates can have on industry, especially EITE. However, while the CLCPA authorized the DEC to adopt "alternative compliance mechanisms" (ACMs) and to the extent they might be are developed by DEC. However, this option may provide limited, if any, compliance flexibility since, by statute, their development is discretionary, not required, and the statutory requirements for alternative mechanisms ACMs are confusing and restrictive, which will significantly reduce their practical use.

As major statutory amendments seem unlikely, we believe that the DEC – under provision of the CLCPA and existing statutory and regulatory authority – can offer emission sources compliance flexibility by authorizing the use of alternative methods, including es those included in the CLCPA (emission offsets, natural carbon sinks, greening

infrastructure, among others). These flexible permitting conditions can help achieve net zero emissions, and still be consistent with the most significant environment and public health provisions for ACMs set forth in the CLCPA, i.e., they cannot account for more than 15% of 1990 emissions, cannot result in disadvantaged communities having to bear disproportionate environmental burdens, and must be real, additional, verifiable, enforceable, and permanent. Importantly, these types of flexible permit conditions should also be allowed, at the DEC discretion, based on economic feasibility, if the likely outcome without their use would be the out-of-state leakage of emissions and economic activity. Currently, the CLCPA ACM provisions require demonstration that compliance with greenhouse gas emissions limits is not technologically feasible.

Impacts on Disadvantaged Communities

The CLCPA includes important provisions related to air emissions and air quality in designated disadvantaged communities. It directs the CAC to “identify measures to maximize reductions of both greenhouse gas emissions and co-pollutants in disadvantaged communities” and further directs the DEC, in promulgating regulations, to “prioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities” and to encourage early action to reduce greenhouse gas emissions and co-pollutants.

The CLCPA also includes the following provisions:

- By October 1, 2021, the DEC was required to prepare a “program demonstrating community air monitoring systems” that could be deployed in high priority locations in disadvantaged communities (i.e., those with potentially high exposure burdens for toxic air contaminants and criteria air pollutants, with monitoring initially to be implemented in at least four communities.
 - o As announced by the Governor’s Office in 2021, the DEC is conducting its 2022-23 Statewide Community Air Monitoring Initiative in ten communities, which were identified as having a disproportionate air pollution burden; these areas include Buffalo/Niagara Falls/ Tonawanda, Capital Region, Bronx, Manhattan, Rochester, Syracuse, Mount Vernon/Yonkers, Brooklyn, Queens, and Hempstead. In June of this year, air monitoring began in the Bronx, Buffalo/Niagara Falls/Tonawanda, Capital District, and Manhattan. In September 2022, air monitoring will begin in Brooklyn, Hempstead, Mount Vernon/Yonkers, Queens, Rochester, and Syracuse.
- By June 1, 2024, the DEC is required to prepare a strategy to reduce emissions of toxic air contaminants and criteria air pollutants in disadvantaged communities affected by a high cumulative exposure burden. The strategy must include the identification of stationary and mobile sources and their relative contributions to emissions, and an assessment of the existing and available measures for reducing emissions from the contributing sources or categories of sources identified pursuant to paragraph b of this subdivision.
- The DEC is also given the authority to adopt regulations to achieve emission reductions in these selected locations, using the most cost-effective measures identified as part of this assessment process.

Finally, Section 7 of the CLCPA also directs all state agencies to, in considering all forms of administrative approvals including but not limited to permits and licenses, grants and loans, contract approvals and others, to “consider whether such decisions are inconsistent with or will interfere with” the attainment of CLCPA GHG emission limits, and where decisions are found to be inconsistent with the Act, to provide detailed statement of justification as to why such criteria may not be met, and identify alternatives or GHG mitigation measures to be required where such project is located. The DEC is further directed to assure that such decisions “shall not disproportionately burden disadvantaged communities.”

We support the CLCPA’s focus on overburdened communities and believe that the CLCPA’s specific provisions regarding the assessment and planned reduction of emissions in disadvantaged communities, coupled with existing provisions of the state’s Environmental Conservation Law addressing both emission limits and environmental justice concerns, provides an effective approach to achieving further emission reductions and improved air quality and public health impacts in these areas. However, we are concerned with the excessively broad and vague provisions of Section 7, which provides no guidance as to what it means to be inconsistent with the Act, or how to assess potential “disproportionate” burdens, and whether that standard means only

comparatively higher levels of burdens or whether there must be a determination that burdens are posing an actual risk of environmental or public health harm.

We are also concerned with an overbroad interpretation of Section 7 provisions that has been relied on by DEC to deny certain permits. Nothing in Section 7 grants this explicit authority.

The state's approach dealing with disadvantaged communities needs further definition. There needs to be a linkage between the emissions reduced and the benefits produced. Currently aside from indicating there are disadvantaged communities, there is no outcome specified for 2030, 2040, or 2050 to indicate that the investments made in these communities will generate benefits.

Issues Impacting the Buildings Sector

We recognize that New York is committed to significantly greater electrification of its building sector, and that this will be an essential component of achieving the CLCPA's GHG emission reduction targets.

This transition will be a massive and costly undertaking, especially considering the upfront capital costs of this transition (even with the potential for those costs to be offset, over time, with lower costs for fuels), and it will require significant changes in both sectors, as well as major investments in expanded electric power generation, transmission systems and local energy distribution networks. As such, this is another instance where CLCPA implementation measures need to avoid adverse impacts on investment and growth, and the potential for "leakage" of economic activity and emissions that can result in increased global greenhouse gas emissions.

E-Building Mandate - The DSP recommends the prohibition of gas and/or oil equipment for space conditioning, hot water, cooking and appliance for new construction of single family and low-rise residential buildings by 2024, and for residential buildings over 4 stories and commercial buildings by 2027.

In general, we are opposed to any gas or gas equipment bans, particularly at this early stage where the decarbonization value of technologies like RNG and hydrogen have not been fully explored. We also support dual heating applications for buildings which will reduce the need for, and costs associated with, electric system buildout and burdens on the electric grid.

The DSP provides less detail on implementation of these "e-building" mandates than we saw in various legislative proposals, and the final scoping plan should be informed by issues debated with regard to e-building legislation:

- While any e-building mandate should provide for exemptions based on physical or technical infeasibility (as we have seen in proposed legislation), this approach would still allow for limited factors to be considered in determining infeasibility. One factor that seems to be ignored by some proposals, and that is beyond the control of a building developer, is the availability of adequate local electric power infrastructure to accommodate an all-electric building mandate. This is a particular concern for large commercial, industrial or institutional buildings, all of which would be covered by this mandate. We believe the factors for an infeasibility determination should specifically address and include electric power infrastructure considerations.
- Several legislative proposals have suggested that financial considerations are not a sufficient basis to determine infeasibility. We are concerned that this approach underestimates the cost impacts of this electric building mandate. We expect that the capital and/or operating cost impact of this mandate will discourage industrial and commercial investments in the state – impacts that could be avoided providing an expanded consideration of infeasibility to include economic infeasibility. It would not help the state economy – or worldwide emission levels – if investments in New York were frustrated, and consequently occurred elsewhere, due to overbroad mandates that failed to reflect reasonable exceptions for infeasibility.
- Finally, any e-building mandate must be clear as to what components of a building it applies, and we believe this type of mandate should apply to building heating and cooling functions, and to non-process hot water. It should not apply to industrial and commercial process equipment, including those involving process water heating.

Note that the state legislature, in recognition of these types of cost concerns, has proposed several mechanisms to support this transition while mitigating costs and not discouraging future investments from being made in New York. These include but are not limited to legislation to provide a sales tax exemption for residential and commercial geothermal heat pump systems equipment and legislation, which provides an investment credit under the personal income tax for expenditures on geothermal heat pumps.

Other measures may be necessary, especially for multi-family housing, major commercial projects and for industrial projects, all of which would be covered by the DSP's electric building mandate (and by proposed NYS legislation.) It would be poor public policy to put this mandate in place without a comprehensive plan for its implementation.

Building Benchmarking - We support the DSP's recommendation for building benchmarking. Benchmarking should be done using the EPA Energy Star portfolio manager tool (or a similar tool in general use, approved by NYSERDA). That is a well-known, well-respected and widely used assessment tool that, among other things, produces a building score on a 1 to 100 scale that can be used for comparisons within a category of business. And while a benchmarking program could include public disclosure of benchmarking results, any building-specific disclosure should be limited to the building's comparative score. If the state is to adopt a benchmarking mandate, with public disclosure requirements, it needs to avoid requiring publication of detailed production and energy consumption information that could constitute business confidential data. Benchmarking information held by state agencies is subject to, among other provisions of law, the protections under Public Officers Law Article 6 that precludes disclosure of records that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." We agree that the limitations under the state's FOIL laws would apply to any benchmarking data, which supports our position regarding further limitations on the proposed statutory definition of "public benchmarking information."

Issues Impacting the Transportation Sector

New York has already adopted legislation – S.2758 (Harckham)/A.4302 (Englebright), Chapter 423, Laws of 2021 - that commits New York to increased deployment of electric vehicles. That law (ECL § 19-0306-b) establishes a goal of one hundred percent of new passenger cars and trucks offered for sale or lease, in New York to be zero-emissions by 2035, with a further goal of one hundred percent of medium- and heavy-duty vehicles sold or leased in New York "for all operations" to be zero-emissions by 2045, where feasible. It sets an additional goal of 100 percent zero-emissions new off-road vehicles by 2035, again where feasible. That statute also provides the DEC with authority, to extent consistent with federal law, to adopt regulations requiring increasing volumes of new zero-emissions vehicles offered for sale and lease, and to adopt other strategies to help achieve these goals, including – by January 31, 2023 – the adoption of a zero-emissions vehicle market development strategy. Finally, it directs the DEC, working with other state agencies, to use their various authorities to "accelerate deployment of affordable powering options for zero-emissions vehicles, in ways that serve all communities and particularly low-income and disadvantaged communities, consistent with state and federal law," and to "[support] light, medium, and heavy-duty zero-emissions vehicles and infrastructure as part of larger transportation projects, where appropriate."

While the market is moving toward EVs, especially for light duty vehicles, there is still uncertainty as to the technology and timing for a clean fuel transition for medium and heavy-duty vehicles, including off road vehicles, and we see an extended period of cleaner-fuel vehicles before achievement of a fully zero emission medium- and heavy-duty vehicle fleet. We recommend against any additional state-level mandate or restriction on medium- or heavy-duty vehicle technologies or fuels until technology development advances further, whether they be electric or alternative fuel-based.

EV Charging Stations – In our initial comments on the CLCPA scoping plan, submitted at the April 14 public hearing in Albany, we recommended that the state "Identify measures that can be readily achieved in the short term, with limited costs or economic disruption but meaningful emission benefits, and to promote emergent, but not-yet-fully "mainstream" technologies through state financial and technical assistance."

We believe that the promotion of and incentives for electric vehicles and EV charging stations meets that objective. Every major car manufacture has committed to an increased transition to electric vehicle production, and various

entities ranging from energy utilities to retail stores are supporting the production, deployment and powering of EV chargers.

An accessible EV charging infrastructure is essential to assuring achievement of the state's zero emission vehicle goals. Importantly, this infrastructure will likely rely principally on charging capabilities at home for personal vehicle users, and at work locations for commercial vehicles.

A major challenge and costs related to EV adoption is the need for expanded local electric power service, especially for concentrated fast charging stations. Energy utilities need to be provided the lead time and financial resources to make these necessary investments.

The other major aspect is the deployment of publicly accessible EV charging. One concern we have heard is that several proposals for publicly accessible charging stations are excessive and will result in an inefficient deployment of both private and public funds. These installation mandates would mandate EV charging deployment well beyond current needs, with just 3.2 percent of light duty vehicles registered in New York State being EVs. While these figures are growing, it will be a decade or more before New York comes close to 40 percent EV use.

Rather than concentrating investments in new chargers (and concentrating the expenditure of NYSERDA incentives for EV chargers) at a limited number of new building sites, the state should be promoting a broader, more strategic deployment of chargers. We note that other pending legislation – S.9363 (Comrie)/A.10100 (Englebright) - would requires NYSERDA to develop a comprehensive electric vehicle fast charging station implementation plan. Any such plan should accommodate the steady growth of EV deployment without “overbuilding” EV chargers in early years of this transition.

Finally, a collection of fast-charging stations often has a very high potential maximum electric demand. In addition to being very expensive, utility systems may not have the infrastructure needed to accommodate a proliferation of these stations. While electric utility customers have been funding – and will continue to fund – the decarbonization of the electric generation sector, it would be inequitable to require such customers also to fund decarbonization efforts for other sectors of the economy, such as the buildings/heating sector. Funding for investments in transportation sector initiatives should other, broader based sources.

Issues Impacting the Waste Sector

Expanded Producer Responsibility – In its recommendations regarding waste reduction, the DSP supports legislation that “creates an EPR/product stewardship framework,” or, alternatively, the adoption of legislation targeting specific products with the greatest GHG emissions potential.

It needs to be recognized that New York already has a broad, pre-existing statutory structure to support post-consumer source separation, recycling and re-use – much of which dates to the groundbreaking Solid Waste Management Act of 1988. Unfortunately, the state has failed to give sufficient policy and financial support to the state's existing, comprehensive, solid waste management program, and in part the ongoing focus on EPR legislation can be attributed to the unsatisfactory implementation and achievements of existing statutory provisions.

We strongly recommend that, rather than endorsing new statutory mandates, the final scoping plan should support authorization and funding for a comprehensive recycling needs assessment. That needs assessment should evaluate the performance and shortcomings of current efforts, as well as the level of “compliance” with the state's existing statutory and regulatory structure. The needs assessment should also examine in detail the factors that would be required to be addressed in proposed EPR legislation, such as the existing cost and performance of municipal and private sector material collection and processing activities.

It should include an evaluation of the following factors: recent data on the amount of recyclable material that is recovered, and, of that amount, the amount that was sold or otherwise diverted to markets, and if sold, the amount of receipts from such sales; and the amount of such materials that was disposed of and the manner and costs of such disposal on a per ton and aggregate basis; an assessment of existing municipal and private recyclable material collection and management capacity and practices, including a discussion of existing municipal collection efforts; a calculation of the cost of collections and transportation; an assessment of residential and commercial accessibility to curbside collection or transfer stations; a description of the nature, capacity and capabilities of material handling facilities on a facility-specific and regional basis; and a description of recommended improvements in equipment and practices and their projected costs.

One study by [York University](#) projected the direct costs of a New York State EPR bill at \$800 million or more, with total economic impact on the state in the \$2.9 billion to \$4.17 billion range. Given the significant cost uncertainty of other components of the state's CLCPA implementation efforts, we believe the state should focus on getting maximum return from its existing secondary material management strategy before committing the state to another, duplicative multi-billion dollar program.

Renewable Gas

We strongly believe that the use of Renewable Natural Gas (RNG) can and should play an important role in meeting the CLCPA's GHG emission reduction goals.

The Business Council supports the objectives of the CLCPA and its potential to catalyze the clean energy economy. Achieving the ambitious goals established by the CLCPA, however, will require a diverse set of solutions, flexibility, and an all-technology options approach, including the use of RNG. As discussed further below, RNG is uniquely positioned to reduce greenhouse gas (GHG) emissions, create jobs, and enhance supply diversity within a relatively brief period of time by utilizing available technologies that are quickly improving. Another potential advantage of RNG is that it largely or entirely can be distributed using gas utilities' existing infrastructures, thereby putting them to continued use and avoiding the construction of alternate distribution models and/or the potential incurrence of tens of billions of dollars in stranded costs.

The Business Council support the state's significant commitment to renewable energy, while maintaining reliability, and we believe that the renewable energy market paradigm will create significant opportunities for economic development and job growth in the coming decades.

Importantly, the recovery of biogas and subsequent processing to low-carbon RNG represents a holistic view of the energy system by capturing gaseous by-products of local waste stream decomposition to address climate change goals. According to the National Oceanic and Atmospheric Administration, methane emissions are roughly 28 times more effective at trapping heat than CO₂, and according to a study conducted by Energy and Environmental Economics (E3) for the Climate Action Council (CAC), agriculture and waste emissions comprise 10 percent of the total greenhouse gas emissions in New York. RNG produced from organic waste that would otherwise decay and create methane emissions can, therefore, meaningfully contribute to achieving the CLCPA's goals. In fact, such RNG can actually achieve negative carbon footprints (i.e., capturing more GHG than is emitted) by reducing methane emissions through avoiding "business-as-usual" disposal pathways.

Studies conducted by E3 for several jurisdictions, including New York and California, show that RNG is a necessary decarbonization strategy, even in high-electrification scenarios. Furthermore, E3's high-electrification scenarios consistently show significant demand for fossil-derived natural gas remaining through 2050, which should be decarbonized using RNG wherever possible pursuant to the ambitious GHG reduction targets set by the CLCPA. Indeed, E3's work conducted for New York specifically identifies switching to low carbon fuels, including biofuels, as one of "Four Pillars of Deep Decarbonization." E3 identifies bioenergy/fuels like RNG throughout the report as potential contributors to emission reductions in multiple sectors, including power, transportation, buildings and industry. Moreover, a report prepared by The Brattle Group for the NYISO considers RNG a potential future zero emissions technology and acknowledges that RNG is "[i]ncreasingly viewed as an important part of [a] future zero-carbon system."

By some estimates, New York has an approximate annual RNG production capacity of 53 - 271 Bcf/year. This abundant potential for RNG development puts the State in a strong position to utilize RNG as an emissions reduction tool in multiple sectors and in a fashion that captures fugitive methane emissions from landfill and agricultural operations.

The use of RNG also makes economic sense. Construction, operation, and maintenance of RNG gas production plants create new jobs, stimulate local economies and provide potential additional revenue streams for entities such as local farmers and municipalities. Specifically, developing RNG projects can benefit local economies through the construction of infrastructure and, if used for vehicle fuel, RNG has the potential to draw outside vehicle fleets to a community.

Achieving the goals of the CLCPA will require mobilizing all levels of industry, deploying new technologies, utilizing existing assets in new ways that properly consider and balance among competing goals including safety, reliability, cost-effectiveness, and efficiency. Achieving the CLCPA's emission targets cannot exclusively rely on an approach

that involves procuring only traditional renewable resources. While such an approach could help achieve the 70 by 30 target, it might inadvertently imperil the reliability of an electric system that would be increasingly reliant on intermittent resources. RNG, unlike intermittent energy sources, is available 24 hours per day, seven days a week, using existing natural gas infrastructure for reliable storage and delivery. RNG is also an important near-term decarbonization strategy for applications currently utilizing fossil-derived natural gas and, in the long-term, will be necessary in applications with certain reliability requirements or which are not suitable for electrification.

This discussion of RNG also relates to the potential impact of CLCPA compliance on electric reliability. The 70 percent renewable mandate relies on much greater reliance on intermittent resources, and reports by the NYISO indicate that on average solar generation produces less than 20 percent of its maximum capability and wind generation produces less than 30 percent of its maximum capability – production that is impacted by normal patterns of daylight and wind. By relying more on intermittent forms of generation and less on traditional (emitting, but more available/reliable) forms of generation, the CLCPA presents enormous challenges to electric reliability. In order to meet electric power demands while complying with the CLCPA, the state will need to rely on tens of thousands of megawatts of dispatchable, emission-free generation, which technology either does not exist or currently is not viable. A related concern for industrial manufacturers is that due to increased reliance on intermittent forms of generation – whose output can go from high to low, or zero, very quickly – there will be increased power quality issues (e.g., voltages surges and sags). Finally, at the same time the state is seeking to rely more heavily on less reliable forms of generation, electrification efforts (e.g., heat pumps, EVs) will increase electric demand and consumption statewide, putting added stress on the system. Of course, another potential concern is that these electrification efforts only will become more expensive and unlikely to achieve if electricity rates/prices continue to rise. Again, use of RNG and existing distribution networks can help address these supply, cost and reliability concerns.

Finally, we echo concerns raised by other commentators regarding GHG accounting issues that are unique to the state. Specifically, its approach to methane global warming potential (GWP) and gross emissions accounting.

First, rather than using 100-year GWPs as is done by the US EPA, most other states and other major climate entities, the CLCPA account for pollutants on a 20-year lifetime. Using a 20-year GWP value for methane results in a roughly three times higher GWP than the 100-year accounting standard, effectively grossly inflating the negative consequence of methane leakage and putting New York notably out-of-step with other jurisdictions.

Similarly, in its Part 496 regulations, uses the same emission factor for RNG as for natural gas, which does not accurately capture the lifecycle of the carbon content in RNG. Most RNG is derived from sources that are currently emitting biogenic methane and carbon dioxide into the atmosphere, sources like landfills, wastewater treatment plants, agricultural waste, and other organic decomposition sites. RNG captures those emissions and uses that energy to displace natural gas use. The CLCPA gross accounting method of claiming RNG is the same as fossil gas fails to offset RNG combustion with emissions avoided at production, is not consistent with the IPCC standards. RNG combustion accounts for no additional carbon dioxide emissions in the IPCC reporting guidelines. Given RNG's role as a replacement for natural gas in meeting the state's emission reduction and energy reliability goals, the state should address these accounting anomalies and adopt a more standard approach as used by other state, federal and international jurisdictions.

Economy-Wide Strategies

A natural corollary to concerns about the cost of CLCPA compliance are concerns about how those costs will be paid for, and by whom. Our expectation is that the most significant share of implementation and compliance costs will be borne directly by the entities subject to the compliance requirement (at least for the private sector entities), as is the case for virtually all environmental regulatory compliance mandates, most energy efficiency mandates and voluntary actions.

We recognize that, principally through NYSERDA, electric energy customers have been spending about than \$1 billion annually to support renewable generation and energy efficiency projects, and the FY 2023 state budget contains several additional appropriations, including \$500 million from UDC resources for the development of a wind power supply chain infrastructure, with additional funding coming from other broad spending authorities available for environmental sustainability projects, EV charging stations and other climate-related purposes. There are also limited tax credits that offset environmental expenditures, such as the investment tax credit. Further, if approved by voters, the proposed Environmental Bond Act will provide funding for several categories of CLCPA-related projects, including at least \$400,000,000 for green buildings, \$500,000,000 for zero emission

transportation, including already-mandated zero emission school buses and supporting infrastructure, and \$200,000,000 to reduce water and air pollution affecting disadvantaged communities. Even so, given the high priority typically given to achieving the CLCPA's emission reduction and renewable energy goals, the state currently devotes a relatively small share of its annual budget to these purposes.

Likewise, New York and other states will be sharing the \$1.2 trillion federal "Infrastructure Investment and Jobs Act," approved in November 2021, which will provide one-time federal funding for several categories of targeted funding for CLCPA-related activities, including but not limited to \$5 billion for clean school buses, \$7.5 billion for electric vehicle charging, \$6 billion relating to battery research, \$8 billion for the development of hydrogen as energy source, among others. However, there is no recurring federal funding for most categories of CLCPA compliance, and the bulk of CLCPA compliance funding will be generated internal to New York's economy. (There needs to be a coordinated effort by the state to work with other interested parties/investors in the state related how IJA funds can be best put to use and leveraged.)

However, these state funding measures are a very small share of the DSP's estimated \$140 billion in annual New York State energy system expenditures and will be a small share of CLCPA compliance expenditures.

In considering "economy wide measures," what is really being considered is funding to support expenditures on public sector facilities and activities (e.g., public buildings and public transportation infrastructure) and to support state-provided incentives and supports for private sector actions.

It is important to note that the three "economy-wide approaches" discussed in the DSP – carbon pricing, cap and trade (or, in the DSP vernacular, "cap and invest"), and clean energy supply standard are not mutually exclusive, as we see two of the three strategies already being implemented in New York State (i.e., RGGI is a cap and trade program applicable to power generators, and load serving entities are subject to a form of CES under the RECs program).

The DSP suggests that options for any economy-wide strategy be evaluated based on several factors, including impact on CLCPA compliance, price certainty, impact on emission reductions in disadvantaged communities, sufficiency of revenues produced, impact on emission leakage, consistency with other programs, regional equity, impact on economic development and innovation among others.

We conducted our own, informal assessment of how carbon pricing, cap and invest, and clean energy supply standard match five key comparison factors - CLCPA compliance, impact on disadvantaged communities, revenue generation, avoid emission leakage and supporting growth and innovation. Based on varying strengths and weaknesses, we found that carbon pricing and cap and invest were near equal in preference, and both more favorable than a CES approach.

Many businesses would argue for a CLCPA implementation plan that relied heavily if not exclusively on market mechanisms such as across-the-board carbon pricing or a comprehensive cap-and-trade program, with the state avoiding activity- or sector-specific mandates.

However, by the design of the CLCPA, and by the nature of New York politics, that outcome is unlikely. Our expectation is that New York's CLCPA implementation program will be heavy on regulatory mandates, coupled with some targeted incentives and financial support.

Therefore, the state should avoid imposing a "double hit" on regulated entities that would come from both specific regulatory mandates and a carbon tax that is sufficiently onerous to influence investment and operational practices (i.e., be so costly as to compel emission reductions, either by modifying the emission source, reducing emission-related activities or causing departure from the state.)

For example, we expect several of the DSP's proposed economy-wide strategies assessment factors to be addressed by specific regulatory programs, such as emission reductions in disadvantaged communities (i.e., CLCPA §75-0115 already requires the DEC to develop a program to reduce emissions of toxic air contaminants and criteria air pollutants in disadvantaged communities affected by a high cumulative exposure burdens.)

Instead, the role of any additional "economy-wide strategy" should be to provide adequate support for a reasonable level of state investment in renewable energy and emission reduction programs, set at a level that will not have a significant impact on economic activity (in economic parlance, avoiding economic distortions.)

Importantly, a essential step that needs to be taken prior to consideration of any such strategy would be the setting of a multi-year CLCPA "budget." As discussed elsewhere in these comments, the state needs a more specific,

detailed CLCPA action plan, that covers a reasonable planning period (five to ten years), with that plan identifying both specific actions and mandates and state resource needs for direct expenditures and incentive programs. This “budget” should also include a more detailed and comprehensive assessment of existing “green” revenue streams and spending patterns before it adopts a significant new revenue program.

Moreover, given the broad scope of CLCPA mandates, and its applicability to all categories of carbon-based fuels, any additional funding mechanisms under consideration should be broad-based as well.

Currently, the bulk of renewable energy and efficiency expenditures are funded by electric power ratepayers. For example, NYSEDA, according to its “Fiscal Year 2022-23 Budget and Financial Plan” anticipates just over \$1.7 billion in receipts, with 92 percent of those funds coming through various assessments on the electric power system customers, including \$775 million in “utility assessments,” \$611 million in ZEC payments, \$167 million in RGGI allowance sales and \$30 million REC proceeds. All of those revenues are provided by electric customers.

Given New York’s already high tax burden (the nonpartisan [Tax Foundation](#) calculates New York’s state and local tax burden as a percentage of the state’s share of net national product at 15.9 percent, the highest of any state and 55 percent above the 50 state average), the state needs to be cautious about imposing significant new taxes on its economy, businesses and residents. In particular, there is a direct and strong correlation between energy costs and economic activity. Continued, upward pressure on energy costs will lead to reduced capital investments, production, and jobs from energy-intensive businesses, such as manufacturers, many of which operate facilities in other states and countries.

Our analysis of the proposed “Climate and Community Investment Act,” or CCIA, ([S.4264-A \(Parker\)/A.6967 \(Cahill\)](#)) illustrates our concerns about adverse economic impact of new carbon-based taxes. The CCIA would impose “climate pollution fees,” starting at \$55 per short ton of CO2 equivalent content that would be emitted through the combustion of carbon-based fuels which is defined to include coal, petroleum products, natural gas, methane, municipal solid waste or other feedstocks used for waste-to-energy conversion, and biomass. In subsequent years, this fee would be adjusted upward based on several factors, including progress toward meeting the state’s greenhouse gas emission reduction targets. The fee is charged to “applicable entities,” generally defined as the entity making the first in-state sale of a product, or the purchaser of the product for sales that occur outside of the state, but we would expect – and research shows – that energy taxes are largely passed through to end users. (The CCIA also proposes additional “compliance fees” charged to Title V air permit facilities based on a to-be-developed “social cost of pollution index,” with the actual fees uncapped by statute, but set annually through regulation by the DEC.)

The CCIA’s sponsors’ memo says that the bill’s fiscal implications remain “undetermined,” while the advocacy organization NY Renews issued a report projecting “. . . a first-year estimate of \$15 billion dollars” in revenues. By our calculation, shown below, the CCIA’s fossil fuel-based fees would generate more than \$10 billion in revenues. (These estimates are gross revenues, as the CCIA would use up to one-third of these proceeds to fund rebate programs for low and moderate-income households and certain small business.)

We developed the following estimates of total fee revenues by category of fossil fuel, and per unit fees for each fuel category, based on the bill’s initial fee of \$55 per short ton of CO2 equivalent content released from their combustion. We used CO2 data published by the USEIA and US EPA, and New York State fuel usage data from USEIA and NYS DEC sources.

Category	\$ millions	Per Unit cost*
Natural gas	4,221	\$3.22 per 1000 cu ft
Gasoline	2,338	\$0.54 per gallon
Distillate	1,583	\$0.62 per gallon
Aviation fuel	988	\$0.51 per gallon (aviation gas) \$0.58 per gallon (jet fuel)
MSW combustion	630	\$158.70 per ton
Biomass	545	NA
Hydrocarbon liquids	122	\$0.38 per gallon
Coal	78	\$145 per ton
Total	\$10.505	

The Business Council considered the level of additional state taxation of fuels proposed in the CCIA to be unreasonable, and damaging to the state's economy, even before the impact of recent inflation trends, global supply disruptions and other factors influencing fuel costs.

As example, recent [US EIA data](#) shows that industrial natural gas prices in New York State have increased sharply – for the first quarter of 2022, prices were 12.3 percent above pre-pandemic prices in the first quarter of 2019, and 58.7 percent above the first quarter of 2016. They also remain high compared to the rest of the nation, with average industrial prices in New York over the six-month period from October 2021 to March 2022 ranging between 22.3 percent to as high as 53.7 percent above national averages.

If the CCIA assessment was applied to industrial natural gas supplies in March 2022, the total cost in New York, at \$12.91 per MCF, would have been just over double the national average of \$6.32.