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## 2023 Joint Legislative Budget Hearing on Environmental Conservation February 14, 2023

TESTIMONY of  
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Thank you for the opportunity to provide testimony on the proposed Executive Budget on behalf of the Alliance for Clean Energy New York. The Alliance for Clean Energy New York (ACE NY) is a broad coalition dedicated to promoting clean energy, energy efficiency, a healthy environment, and a strong economy for the Empire State, and is New York's premier advocate for the rapid adoption of renewable energy and energy efficiency technologies. Our members include renewable energy and energy efficiency companies, including companies that are currently operating renewable energy facilities in New York, such as hydropower and wind facilities, and those pursuing opportunities to invest in New York to build land-based wind and offshore wind, community solar and grid-connected solar, fuel cells, and transmission. We also have member companies that manufacture electric vehicles or electric vehicle charging infrastructure or otherwise support the electrification of transportation. You can learn more about ACE NY at [www.aceny.org](http://www.aceny.org).

This testimony specifically addresses the following areas:

- Expanding the authority of the New York Power Authority (NYPA) proposed in Part XX of the Executive Proposed Transportation, Economic Development and Environmental Conservation (TED) Budget Article VII Bill (S.4008/A.3008);
- Provision relating to development of a cap and invest program in Part AAA of the Proposed TED Budget Article VII Bill (S.4008/A.3008);
- Transition to all-electric buildings and building benchmarking, as addressed in Part WW of the Proposed TED Budget Article VII Bill (S.4008/A.3008); and
- Policies necessary to accelerate renewable energy development and to reduce pollution from transportation.

## I. Expanding the Authority of the New York Power Authority

ACE NY opposes the Governor's proposed language in Part XX of the TED Budget Article VII Bill (S.4008/A.3008). The proposal would broaden NYPA's authority to own and operate renewable energy projects and would redirect funds from currently existing bill assistance to a new bill assistance program with less funding.

Our main concern with the proposal in Part XX is the unlevel playing field that it will create. Presently, private companies take on the risk of developing renewable energy projects. The expanded powers of a state agency to finance and develop projects will fully place the costs and risks of project development on the backs of ratepayers. The bill has no control for cost overruns, allowing NYPA to pass increased bonding and construction costs on to their customers. Since a significant portion of NYPA customers are municipalities or the MTA, our State's property taxpayers and MTA riders will be paying for renewable construction that the private market currently funds.

Instead of increasing renewables construction, this bill will chill and delay private renewable development. NYPA's ability to issue bonds backed by ratepayers will out-compete market financing for renewable projects, making access to capital for private renewable construction scarcer and more expensive. Also, NYPA projects will not be completed any faster than independent renewable projects since they both need the same permitting and regulatory approvals. NYPA's role should not be in competition with the private sector, but to help reduce the hurdles facing renewable development, like lack of transmission capacity.

ACE NY does believe there is a critical role for The New York Power Authority to play to achieve our Climate Law goals. As I stated at the Senate's recent hearing on Implementing the Climate Scoping Plan, the most important role for NYPA should be to address the very significant transmission constraints that are hampering renewables deployment and when projects are built, are predicted to cause deliverability and curtailment problems. Thus far, NYPA has only designated one priority transmission project<sup>1</sup> since it was given the authority to do so by this legislature in 2021. The Smart Path transmission project is a fine example of the key role NYPA should take in developing renewables, and we urge NYPA to explore other ways it can build out the transmission system to better host renewable energy facilities, including the development of renewable energy interconnection hubs in strategic locations. The Clean Path NY Project, selected as a Tier 4 project<sup>2</sup> and awarded a contract by the New York State Energy Research and Development Authority (NYSERDA), is another approach that NYPA could take. Also, NYPA has the authority – granted by the Legislature in 2018, to develop offshore transmission infrastructure to facility offshore wind power. And NYPA is partnering with Consolidated Edison on the transmission project to bring the power from the Sunrise Offshore Wind Project to Long Island. Again, we firmly believe that bold investment in new transmission facilities would be the best way that NYPA can leverage its expertise and credit worthiness and contribute to New York's achievement of climate goals.

Second, NYPA should issue solicitations to buy clean power and/or Renewable Energy Credits (RECs) from renewable energy facilities in New York and re-sell that power to their customers. In

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<sup>1</sup> <https://www.nypa.gov/power/transmission/transmission-projects/smart-path-connect>;  
<https://www.governor.ny.gov/news/governor-hochul-announces-milestone-smart-path-clean-energy-initiative-north-country>

<sup>2</sup> <https://www.cleanpathny.com/>

this way, NYPA can contribute to the 70% by 2030 and 100% by 2040 energy goals, and gradually phase out its use of non-renewable power. NYPA has announced intentions to procure renewables in the past, but the results have been unsuccessful. The first solicitation, aiming for 1.5 million megawatt-hours resulted in one contract award, which was later cancelled. The second NYPA solicitation resulted in two contract awards, at least one of which was not executed due to proposed NYPA changes to the contract.

Further – reaching 70% renewables by 2030 depends in no small part on how much power New Yorkers will be using in 2030; energy efficiency initiatives in all buildings are a major and critical part of the strategy to keep power demand roughly level through 2030. NYPA can have a huge role to play in advising, financing, and implementing deep building retrofits in all publicly owned buildings in New York, from the village police station to New York City Hall to the Empire State Plaza to the entire operations of the Department of Corrections. NYPA has also been given an important role in building out the electric vehicle charging infrastructure in New York – another important part of meeting Climate Leadership and Community Protection Act (CLCPA) goals.

## II. Cap and Invest

ACE NY is supportive of the Governor’s Cap and Invest program in Part AAA of the Proposed TED Budget Article VII Bill (S.4008/A.3008).

The CLCPA includes an economy-wide cap in emissions (declining to 15% of 1990 emission levels in 2050) and the time has come for the Department of Environmental Conservation (DEC) to implement that cap via a regulatory process. In 2023, DEC is required, by the CLCPA, to develop and issue the regulations to enforce that cap. It should be a set cap (in million metric tons (MMT) of carbon equivalent) in 2025 that then decreases linearly to meet the 2030 and then the 2050 mandates. Any applicable emitter must hold an allowance for each ton of carbon dioxide (CO<sub>2</sub>) they emit or cause to be emitted.

At the same time, the Climate Scoping Plan includes numerous policies and activities that are currently unfunded. If the polluters that need allowances under the cap are required to purchase those allowances (rather than get them for free) they will have a built-in incentive to reduce their emissions, and the State can generate revenue to fund the various measures in the Plan that currently do not have a funding source, including, for example, activities to invest in workforce development and a just transition, to subsidize energy efficiency retrofits and electrification in low- and moderate-income housing, and to re-invest in Disadvantaged Communities.

This approach of capping emissions and investing proceeds, referred to as a Cap and Invest Program, was supported by the Climate Action Council in the Plan, and was supported by Governor Hochul in her State of the State address. As she proposed it, there would be a Climate Action Rebate component that would require legislative approval. Therefore, I urge you to examine this proposal, adjust it as you see fit, and provide your approval, so that a price signal can be put in place and a framework for fairly reinvesting the proceeds can be put in place. There is no time to waste in implementing the emissions cap and funding the Climate Scoping Plan.

The Cap and Invest Program should be designed to assist with affordability (hence the need for the Climate Action Rebate); to reinvest in Disadvantaged Communities; and to avoid the creation or perpetuation of any pollutant hotspots. Ideally, it would be able to merge or combine with other states, and it should protect jobs and economic development in New York, especially if the alternative means that activities that generate emissions simply move across state lines.

In short, legislative action to support the establishment of an economy-wide carbon price signal and declining cap, as well as a framework for re-investing revenues from a cap-and-invest program, should be the keystone of the New York Legislature's actions on climate this session.

### III. All Electric Buildings and Building Benchmarking

ACE NY supports the Governor's Part WW of the Proposed TED Budget Article VII Bill (S.4008/A.3008) which would gradually phase out the use of fossil fuels in the heating of new buildings and replace furnaces, in addition to requiring buildings over 25,000 square feet to benchmark their energy usage.

As I stated at the Senate's recent hearing on Implementing the Climate Scoping Plan, New York law should require buildings over 25,000 square feet to record and report their energy use. Benchmarking of energy use has been shown to drive energy and water conservation measures by building owners once they realize the annual cost of energy, and the savings that can result from efficiency measures. The Final Climate Action Scoping Plan<sup>3</sup> includes the use of benchmarking to provide building owners with information to operate their buildings more efficiently.

ACE NY supports the Governor's proposal to prohibit infrastructure, building systems, or equipment used for the combustion of fossil fuels in new construction statewide. This would take effect on December 31, 2025 for buildings less than three stories and December 31, 2028 for buildings seven stories or more. New homeowners should not be saddled with a building that will need to have its heating and appliances switched off of fossil fuels in the next decade.

The budget proposal also addresses existing buildings, but in later years. Under the Executive Budget proposal, replacement of space and water heating equipment will have to be non-fossil fuel for residential and low-rise buildings starting several years from now, in 2030, and starting in 2035 for high-rise buildings. These timelines will allow home and building owners time to plan for the electrification of their homes, while also sending a strong and reliable market signal allowing manufacturers, retailers, and contractors to ramp up production of heat pumps and installation infrastructure needed. There are exemptions in the proposal for emergency back-up power, manufactured homes, manufacturing facilities, commercial food establishments, labs, laundromats, hospitals, other medical facilities, and certain critical infrastructure.

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<sup>3</sup> Page 183, NY Climate Scoping Plan <https://climate.ny.gov/resources/scoping-plan/>

## IV. Additional Actions Needed to Support Clean Energy

There are a number of proposals that are missing from the Governor's budget that would remove barriers and accelerate our transition to clean energy and a healthier environment.

New York has set ambitious goals and fast-approaching timelines for the development of renewable energy in the state and there are barriers that need to be addressed in order to make sure that New York reaches those goals. Permitting and siting roadblocks, unwieldy tax negotiations, and lack of transmission headroom capacity are simply a few of the barriers faced by wind and solar developers. Supply chain constraints have also affected projects moving to construction. New York must work to remove these obstacles to ensure the timely development of clean energy projects.

Below we list some measures that the Legislature should consider to address some of these issues:

- Codify State Operations Going 100% Renewable

ACE NY enthusiastically supports the recent Executive Order Leading By Example, which commits all state operations to use 100% renewable electricity by 2030. This should be codified by the Legislature, particularly for the Long Island Power Authority (LIPA) and New York Power Authority (NYPA).

- Improve Tax Policies to Facilitate Renewable Energy Development

Exempt Renewable Energy PILOT Revenue from Tax Cap Calculations: By exempting Payment In Lieu of Taxes (PILOT) property assessment increases, and not exempting PILOT revenue from Tax Cap calculations, the current law limits revenues that a municipality or school district can realize without a public referendum. In other words, even though a wind or solar project will be paying significant property taxes via a PILOT payment in a town, the tax cap will often require a town to reduce residential and commercial property taxes rather than realize additional revenue and limiting their ability to fund expanded local programs.

Create a Tax Rebate Program for Existing Renewables: Older renewable energy facilities must be kept in operation, and their power and Renewable Energy Credits (RECs) kept in New York. Meanwhile, property taxes are a significant expense for renewable energy generation facilities, especially those built before 2015 which do not have contracts with NYSERDA. We propose a Renewable Energy Retention Program, in which eligible facilities in New York would receive State-supported property tax abatement benefits if they provide renewable power to New York (i.e., do not export power or RECs out-of-state).

- Standardize Renewables End-of-Life Management

Establish Standardized State Decommissioning Mechanism for Renewable Energy Projects: Currently, decommissioning financial requirements are handled at the local level, even those that are required by state regulations through the Office of Renewable Energy Siting (ORES). To standardize and streamline this process, while maintaining the same stringent financial requirements for decommissioning, the Legislature should establish a Standardized State Decommissioning Mechanism for Renewable Energy Projects under Section 94-c of the Executive Law. Project developers would

still be required to post a letter of credit to cover decommissioning costs in the future should that business no longer exist, but the process to do so would be streamlined and standardized. Use of the mechanism could either be mandatory or an option selected by the wind or solar host community.

Facilitate Solar Panel Recycling Without Slowing Solar Project Development: In June 2021, Niagara County passed a law that blocks solar development until a development plan that includes end-of-life recycling has been approved by the municipality. This makes manufacturers of solar panels responsible for financing and planning for the recycling of solar panels after their use. Niagara County’s law has intentionally stalled solar development<sup>4</sup> in the name of solving a problem that 1) doesn’t exist yet and 2) is either redundant or conflicting with State’s decommissioning requirements. New York state should preempt local panel recycling laws or, at a minimum, prohibit local waste treatment requirements from blocking solar development.

- Transmission Expansion to Facilitate Renewables Delivery

Direct NYPA to Assist in Solving Transmission Constraints: Currently, one of the largest barriers to the decarbonization of the New York grid is insufficient transmission capacity in certain locations, which is restricting the interconnection of renewable energy projects or is resulting in congestion or curtailment of renewable power. NYPA should continue to contribute to solving this problem with a renewed focus by proposing, within 6 months, “priority projects” (as defined under the Accelerated Renewable Energy Development and Community Benefit Act enacted in 2020) to solve issues in the top three congested zones as identified by the New York Independent System Operator (NYISO).

- Eliminate Permitting Inefficiencies

Use An Existing DEC Fund for the Endangered and Threatened Species Mitigation Bank Fund: In the Accelerating Renewable Energy Development and Community Benefit Act, the Department of Environmental Conservation (DEC) was directed to create a new fund (Endangered and Threatened Species Mitigation Bank Fund<sup>5</sup>) that could accept mitigation payments from renewable energy developers in lieu of the time-consuming and disconnected process for the developer and DEC to negotiate a mitigation project. As far as we know, DEC has yet to establish this Fund. An alternative approach would be to use one of many existing funds at DEC.

Revise Public Service Law Sections 68, 69, & 70, to Exclude “Alternative Energy Production Facilities” from Regulation under these Sections: Currently, sections 68, 69, and 70 of the Public Service Law include requirements regarding energy facilities that are unnecessary for renewable energy, duplicative of other permitting processes, and slow down renewables development without providing any additional public policy benefit. “Alternative energy production facilities” should be excluded from regulation under those sections. This would have the benefit of not requiring a separate certificate from the Public Service Commission (PSC) for each project on top of the permit from either the Office of Renewable Energy Siting under 94-C or from the State Siting Board under Article 10.

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<sup>4</sup> Prohaska, T, *Niagara County Hopes New Recycling Law Will Discourage Solar Developers*, The Buffalo News, March 2022; [https://buffalonews.com/news/local/niagara-county-hopes-new-recycling-law-will-discourage-solar-developers/article\\_0f6fd0a6-d047-11eb-818d-5f01f54bc7c3.html](https://buffalonews.com/news/local/niagara-county-hopes-new-recycling-law-will-discourage-solar-developers/article_0f6fd0a6-d047-11eb-818d-5f01f54bc7c3.html)

<sup>5</sup> Section 11-0535-c of the Environmental Conservation Law and Section 99-hh of the State Finance Law



- Ensure Safe and Efficient Delivery of Wind Turbine Superloads

At present, state troopers are the only entities allowed to escort large wind turbine parts that are “superloads” and there is concern that there are not enough state troopers to escort materials at the scale predicted for coming years. This issue is addressed in S.373 (Parker) / A.751 (Hunter), which would permit other entities to act as escort vehicles for superloads, expand the permissible hauling days, and streamline state agency processes.

- Sales Tax Exemption for Energy Storage.

Currently, energy storage technologies are not eligible for exemption from state sales tax for residential and commercial installation. However other similar clean energy technologies, such as residential and commercial solar energy equipment and commercial fuel cells, are eligible. The State Department of Taxation and Finance issued an advisory opinion<sup>6</sup> stating that in order to be eligible for state sales and use tax exemptions like solar and fuel cell equipment and installation, energy storage must meet specific, narrowly defined technical requirements that effectively make it difficult to impossible to qualify for the exemption. We support S.4547 (Parker) which would ensure that clean energy technologies are treated similarly under State tax law, thus creating a level playing field for these technologies. Importantly, this bill ensures that “stand-alone” energy storage projects would be eligible for a state sales tax exemption and thereby help to spur deployment of energy storage projects and enable the state’s electric grid to reap the many benefits of this critical technology.

- Sales Tax Exemption for Heat Pumps.

Heat pumps are the key to our transition to efficient electric heating for our buildings. They offer homeowners and landlords an efficient all-in-one heating and cooling system. Air source heat pumps are two to three times more efficient than fossil fuel or electric resistance heating systems.<sup>7</sup> The Climate Action Scoping Plan<sup>8</sup> calls for the scaled-up installation of heat pumps and also a scale up of financial incentives for heat pumps. To reach the Governor’s goal of two million climate friendly homes by 2030 and the emission reductions required by the Climate Law, the state should eliminate the sales tax for the purchase and installation of residential and commercial heat pumps, and allow for local municipalities to suspend their share of the sales tax also. The state currently provides a sales tax exemption on the installation of residential and commercial solar energy systems and fuel cells.

- Allow the Direct Sale of Electric Vehicles

The Legislature should allow manufacturers of only electric vehicles to sell their electric vehicles (EVs) at retail locations across the state. Presently, there are only five retailer locations that hold certificates of registration to sell EVs in New York, all of which are located downstate. We support A.3779 (Fahy), which would eliminate the cap on the number of retail locations that manufacturers that do

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<sup>6</sup> [https://www.tax.ny.gov/pdf/advisory\\_opinions/sales/a09\\_36s.pdf](https://www.tax.ny.gov/pdf/advisory_opinions/sales/a09_36s.pdf)

<sup>7</sup> Air Source Heat Pumps, DOE <https://www.energy.gov/energysaver/air-source-heat-pumps>

<sup>8</sup> Page 183, Scoping Plan [Scoping Plan - New York's Climate Leadership and Community Protection Act \(CLCPA\) \(ny.gov\)](https://www.ny.gov/scoping-plan)

not have franchised dealerships can open. This change would have no cost to the General Fund and would scale up the number of EV retailers in the state. Moreover, it would make it more convenient for all New Yorkers to buy EVs, promoting consumer choice and giving fairer access.

- Exempt Electric Vehicles from Sales Tax

A.3159 (Fahy) provides a State sales and compensating use taxes exemption on the first \$35,000 of battery, electric, or plugin hybrid EVs purchase, and authorizes local governments to elect to do the same. This legislation will help to reduce the upfront cost of purchasing or leasing an EV, a critical barrier to EV adoption. This bill will support EV deployment and market development in New York. We would also support a phase-out plan for this exemption. For example, the sales tax exemption could be valid between now and 2035 for light duty vehicles.

Thank you for the opportunity to provide input on the energy and environmental aspects of the Executive Budget.