memo

TO:	Senator Liz Krueger Senator Kevin Parker Senator Pete Harckham
FROM:	Ken Pokalsky
SUBJECT:	CLCPA Scoping Plan Implementation
DATE:	1/18/23

We appreciate this opportunity to submit comments for inclusion in the record for today's joint hearing of the Senate Finance, Energy and Telecommunications, and Environmental Conservation Committees, which is seeking input on legislative and budgetary actions necessary to implement the Climate Action Council's Final Scoping Plan and meet the statutory objectives of the Climate Leadership and Community Protection Act (CLCPA).

It would be difficult to overestimate the task at hand. The CLCPA mandates the design of a novel statewide energy system and the restructuring of many aspects of the state's economy. While the implantation plan will employ, especially in the short term, many "proven technologies," these technologies will have to be deployed to a degree not previously attempted. And while investments in these and other 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 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 of 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 specific measures recommended in the Final 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 climate. Likewise, the Administration and Legislature needs to pay close attention to environmental achievements and implementation costs, to assure that CLCPA implementation measures 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 structures, 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 Department of Environmental Conservation (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 far more definitive regarding achievement of 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 Final Scoping Plan, are not just theoretical, but a very real consequence of excessively strict or costly environmental and energy

mandates, coupled with a wide range of additional factors – taxes, labor law mandates, workforce limitations driven by 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 lost production activity has relocated to less carbon-efficient jurisdictions than New York State.

These comments, and our ongoing engagement with the Administration and Legislature, are focused on assuring an effective, efficient, affordable plan to meeting the state's renewable energy and emission reduction goals, assuring a healthy environment, and assuring an attractive state economic climate.

As always, we welcome the opportunity to discuss these recommendations and concerns with you and other members of the State Legislature.

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Adopt a Comprehensive "Climate Action Budget" – As an immediate next step, the state should develop a comprehensive "Climate Action Budget," that encompasses all state-mandated spending on climate change-related activities, including those provided through legislative appropriations; those based on regulatory actions, such as Public Service Commission orders; those funded through bonding mechanisms; and those received from the federal government. (Note, this approach is similar to legislative proposals for a "unified economic development budget," see S.1146 (Krueger)). This tool would identify, for each spending program, the level of annual and cumulative spending, the source of funds, the legal basis for the program, the general purpose of its funding, and – ideally – some level of assessment of the effectiveness and cost-effectiveness of program expenditures to date. It should also identify key factors as necessary requirements for state funding to match federal grants, and the extent to which state spending programs leverage additional private sector funding. New York has a number of ongoing funding programs, including but not limited to the" Clean Energy Fund, authorized to generate more than $11 billion over a twenty year period; the multi-tiered Clean Energy Standard, which will provide several billion dollars in support of renewable generation development; mandatory utility programs to support EV infrastructure (statewide total of $700 million), energy efficiency (nearly $900 million over a five-year period), utility gas energy efficiency programs (more than $500 million over a five-year period), utility heat pump incentives ($450 million over a five-year period); and the regional greenhouse gas initiatives, which to date has generated more than $1.9 billion for state energy program spending; among others. To a large extent, the ultimate cost of these programs is borne by in-state energy consumers. However, we are aware of no comprehensive overview or assessment of these programs, their aggregate cost, or the effectiveness of the measures they fund. It is unclear how the state can decide on additional funding needs without a clear understanding of existing revenue and funding efforts.

Additional Funding – The aforementioned "Climate Action Budget" is an essential precondition to establishing new climate-related spending programs, and funding mechanisms, as it will illustrate which major CLCPA program elements are already receiving adequate funding and which require new or additional support. Given the Final Scoping Plan's lack of focus on program-specific or total funding needs, a major challenge to the Administration and legislature will be developing proposals for appropriate, effective, and affordable mechanisms. The Final Scoping Plan recommended, and in her recent State of the State message Governor Hochul specifically endorsed, adoption of a "cap and invest" program that would require sources in major GHG emission sectors – transportation fuels, utilities, industry, waste management – to obtain allowances for their source- or entity-specific GHG emissions. Key provisions of a cap and invest program will be established in regulations adopted by the Department of Environmental Conservation and informed by significant stakeholder input – a process already underway. Based on both the Final Scoping Plan and State of the State message, the cap and invest program will be a principal source of funding for CLCPA-related programs as well as a major mechanism for assuring achievement of the CLCPA's emission reduction targets (and assuring compliance by major emission sources.) We expect "cap and invest" to result in a multi-billion-dollar annual revenue and spending program, with its costs ultimately borne by all New York residential, business, governmental and institutional energy consumers (with some impacts offset by the Governor's proposed universal rebate program.) By mandate of the CLCPA, this deadline for adoption of a final cap and invest program rule is December 31, 2023, suggesting its revenue

generation will start in 2024. Given that expected revenue measure, other existing clean energy-related state funding mechanisms, the influx of additional federal funds for a variety of clean energy transition activities, Environmental Bond Act funding and additional appropriations approved as part of the state's FY 2024 budget, we recommend against adoption of any other new or increased CLCPA-related revenue measures in 2023.

Recognize the Role of Regulatory Agencies and Actions - There should be a clear distinction between legislative and regulatory functions, and the legislature should allow regulatory agencies and CLCPA-related regulatory processes run their course. As example, the DEC has broad existing statutory authority to regulate GHG emission sources, and the Final Scoping Plan includes multiple recommendations for specific regulatory actions, with the CLCPA directing the agency to adopt by the end of 2023 those regulations necessary to achieve the act's 2050 emissions reduction targets. Likewise, the Final Scoping Plan, and Governor Hochul, have endorsed adoption of a "cap and invest" program as a principal mechanism for assuring the CLCPA's emission reduction targets. As such, we recommend against legislation mandating source category-specific emission reduction mandates. Likewise, the state's natural gas distribution utilities have already been directed by the Public Service Commission to develop plans to manage the downsizing and decarbonization of their gas distribution system under the CLCPA. Therefore, we recommend against legislative action mandating specific reductions or curtailments of the natural gas system.

Impact Assessment – "Transparency" is a widely demanded attribute of all types of governmental programs. The state needs to be far more transparent about CLCPA-related transition costs, such as the impact on electric power rates resulting from known and planned investments in renewable energy resources, the expected cost and cost-impact of necessary electric distribution system build-out, the cost imposed by electrification mandates, among others. Despite numerous calls from both Climate Action Council members and members of the public during the public comment period, for the scoping plan to more specifically assess and report on these costs, no such cost-impact assessment is part of the Final Scoping Plan. Calculating and reporting on these real-world cost impacts is essential to make informed decisions about new regulatory mandates, and to craft effective cost-mitigation measures such as the Governor's proposed rebate program. These detailed cost assessments are also essential to make New York energy consumers aware of the likely impacts of new mandates, and to help them make informed decisions about investments in energy efficiency and alternative energy mechanisms.

Address Economic Climate Issues – We appreciate the Final Scoping Plan's vision of significant CLCPA-related expenditures resulting in the expansion of in-state supply chains and an expansion of New York's manufacturing sector. However, the plan itself offers little in the way of specific strategies to achieve these goals. While the plan includes several non-specific recommendations for business incentives, in most cases even these recommendations are qualified by limited applicability (e.g., targeted incentives limited to preferred businesses such as those located within disadvantaged communities, MWBEs and SDVOB) or are linked to labor mandates, such a public-works prevailing wages. New York's challenges in maintaining its manufacturing sector are well documented. Since 2012, for example, while U.S. manufacturing employment increased by 3.4% or 400,000 jobs, manufacturing employment in New York continued to decline, by 10.9% or 50,000 jobs over that same period. It is far from clear what incentives or other mechanisms New York will be able to deploy as part of its CLCPA implementation process that will reverse this longstanding trend that will be significantly more effective than prior policy initiatives. We recognize that some new mechanisms are available, such as requiring renewable energy solicitation bidders to include in their bids state economic benefit projections which include use of in-state suppliers. However, it is far from clear that such efforts will offset other economic climate challenges in New York, including every more-demanding labor law mandates, relatively high taxes (including payroll taxes), and stringent environmental regulation – including new project-specific mandates imposed by the CLCPA and recently adopted legislation, not to mention the potential impact on energy costs and availability resulting from CLCPA implementation. New York remains a high cost, high regulation state, and CLCPA implementation raises the specter of significant additional restrictions and mandates on the private sector, especially within the energy-intense manufacturing sector. The state needs to make the state's business climate more competitive for industrial investment and manufacturing job growth.

Alternative Compliance Mechanisms – The Final Scoping Plan recognizes the cost and technological challenges that regulatory mandates can have on the industrial sector, especially for "energy intense, trade exposed" industries (EITEs), and recommends against "non-incentive-oriented" measures, such as "command and control" regulatory mandates. This approach recognizes both the heterogeneous nature of the manufacturing sector and its heightened sensitivity to energy cost increases, and therefore the need for flexibility in promoting industry sector emission reductions. When and if the state moves to source-specific emission mandates for industrial sources, compliance flexibility could still be provided. However, while the CLCPA authorized the DEC to adopt "alternative

compliance mechanisms," their development is discretionary, not required, and the statutory requirements for alternative mechanisms ACMs are confusing and overly restrictive, which will significantly reduce their practical use. We recommend amendments to the CLCPA's alternative compliance mechanisms provisions, to eliminate unnecessary restrictions, such as the requirement that emission offset projects must be in the same county as the regulated source. Further, 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's alterative compliance mechanism provisions are only available upon demonstration that compliance with greenhouse gas emissions limits is not technologically feasible. These flexible permitting conditions can help achieve net zero emissions, and still be consistent with the most significant environment and public health provisions for set forth in the CLCPA, (i.e., they cannot account for more than 15 percent of 1990 emissions; cannot result in disadvantaged communities having to bear disproportionate environmental burdens; and must be real, additional, verifiable, enforceable, and permanent.)

Standards for New Construction - Based on our review of recent legislative proposals to restrict carbon emissions from newly constructed businesses, we have several major recommendations regarding any such proposals in the 2023 legislative session. Any such restriction should only apply to emissions related to space heating and cooling, and non-process water heating. Legislation should allow for exemptions based on physical or technical infeasibility, including the availability of adequate local electric power infrastructure to accommodate an all-electric building without undue delays or increased infrastructure costs. While some proposals preclude costs as a factor in assessing compliance feasibility, 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. Some mechanism for considering unreasonable costs, or providing state financial assistance to offset such costs, should be part of any final legislation. Any provision limiting the installation of natural gas or oil piping systems or infrastructure should accommodate both systems or areas of a building where the all-electric mandate is determined infeasible, as well as infrastructure related to the use of fuels for commercial and industrial processes not subject to this legislation. Finally, legislative proposals have proposed two-step phase in of zero emission mandates based solely on the height of a proposed building (e.g., seven or more stories.) This would mean that a single-family home and million square foot warehouse would be on the same compliance cycle. A more practical threshold for this phased-in mandate would be based on the square footage of a building, not its height.

Requirements for Existing Buildings – We generally support the proposal for performance benchmarking and public reporting proposed in the FY 2023 Executive Budget (see S.8008 / A.9008 (Budget), Part EEE) to the extent it tracks the provisions of the EPA Energy Star portfolio manager tool - a well-known, well respected and widely used assessment tool that, among other things, produces a building score that can be used for comparisons within a category of business. However, we have several concerns and recommendations regarding the scope of public disclosure. 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. We do not support adoption at this time of a state-level version of New York City's Public Law 97 imposing building performance standards on existing buildings. This deferral of new mandates is consistent with concerns raised in the Final Scoping Plan, which recognizes the potential cost impact of its "strategic transition to a decarbonized gas system" on the building sector, saying that it is important to avoid undue cost burdens on customers currently using natural gas. While recommending increased use of demand reduction measures, including energy efficiency and demand response programs, the Final Scoping Plan also states that "New York State must explore whether full electrification of heating load in the near term is the most cost-effective and technically feasible solution for all customers," including those in areas with extreme cold climates and in areas with electric capacity constraints.

Supporting EV Deployment – We support measures to incentivize the purchase of electric vehicles and electric vehicle (EV) charging stations. Most major car manufactures have committed to a 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. A major concern 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.

These comments are intended to address several major, immediate issues for consideration by the Administration and State Legislature, but it is hardly a comprehensive review of issues of interest or concern to Business Council members. We expect to be engaged with policy makers on numerous additional legislative and regulatory actions related to the state’s response to climate change, including proposals not included in the final scoping plan.

We look forward to working with members of the Senate Finance, Energy and Environmental Conservation Committees, as well as other members of the state Legislature and Administration, on assuring an effective, workable, and affordable implementation of the CLCPA.

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