

VIA ONLINE SUBMISSION

Bureau of Air Quality Planning
NYS DEC, Division of Air Resources
625 Broadway, Albany NY 12233-3251
URL: www.capandinvest.ny.gov

RE: New York Cap-and-Invest Second Stage Pre-Proposal Comments

The release of the New York Cap-and-Invest (NYCI) Pre-Proposal Outline and Affordability Study by the New York State Department of Environmental Conservation (DEC) and the New York State Energy Research and Development Authority (NYSERDA) marks an important step toward designing and implementing an equitable program that will serve as a critical measure toward compliance with the Climate Leadership and Community Protection Act (CLCPA).

An effective cap-and-invest program will need to serve as a necessary backstop in limiting greenhouse gas emissions and setting New York State on a path toward achieving its obligations under the CLCPA. While this letter is focused only on the issue of buildings sector emissions limits, many of the undersigned organizations will submit separate, substantive comments on various aspects of the design of NYCI. As this program continues to be developed, we appreciate the opportunity to provide feedback.

Given the sector-specific considerations and outside proportion of greenhouse gas emissions from the buildings sector, we urge DEC and NYSERDA to incorporate buildings sector emissions limits in their cap-and-invest program proposal for the following reasons:

(1) The gas utility business model incentivizes capital expenditures and is indifferent to fuel prices; gas utilities are likely to respond in socially inefficient ways to market signals from an economy-wide cap-and-invest program

Because gas utilities pass through the cost of fuel (gas) to their customers but earn a rate of return on capital infrastructure investments, their profit incentive makes it unlikely they will respond in a socially efficient way to market signals from an economy-wide emissions cap, absent restrictions on their ability to trade allowances with other sectors. In contrast to a facility owner who would directly bear the increased cost of fuel under a cap-and-invest program and therefore have an incentive to reduce fuel consumption, a gas utility's profitability is not directly

impacted by an increase in the cost of gas, only by a reduction in its capital investments. The economic interests of gas utilities' shareholders do not align with those of their customers (ratepayers) and, absent a clear directive from the Public Service Commission (PSC) or an actual regulatory cap on buildings sector emissions, gas utilities are unlikely to modify long-term planning to meet the requirements of the CLCPA, leaving customers, and possibly eventually taxpayers, to shoulder the costs of stranded assets and imprudent gas infrastructure investments.

(2) A buildings sector-specific emissions cap would function as a needed backstop to prevent imprudent investments by gas utilities

Gas utilities and the PSC have cited the lack of buildings sector or utility gas sector-specific emissions limits in the CLCPA when pressed to set or enforce specific emissions reduction targets for gas utilities. In recent proceedings before the PSC, gas utilities have continued to put forward plans for profit-seeking gas infrastructure investments, demonstrating the need for clear regulation to rein in the spending and guide their long-term gas planning efforts. They have cited the lack of sector emission limits in the CLCPA to avoid being held to a specific degree of emissions reduction or gas sales reduction, and the PSC has declined to reject these plans.

For example, National Fuel Gas (NFG) recently submitted a 20-year long-term gas system plan that reduces emissions by just over half from 1990 levels by 2042 and puts the utility on a trajectory to achieve few additional emissions reductions before 2050.¹ NFG's plan proposes to reduce gas throughput on its system by only about 10 percent over the next 20 years and would not reduce customer counts at all.² In response to concerns raised by stakeholders that NFG's plan does not achieve adequate emissions reductions proportionate to New York's economy-wide CLCPA mandate, National Fuel Gas stated "the GHG emissions reduction targets in the CLCPA are statewide targets and the CLCPA does not mandate specific emission reduction targets for natural gas utilities."³ The PSC declined to reject NFG's long-term gas plan, instead merely requiring several additional studies and pilots that would not fundamentally change the company's emissions reduction trajectory.

¹ National Fuel Gas Distribution Corp., Final Long-Term Plan, Case 22-G-0610 (July 17, 2023), at 71, Fig. IV-3, 74, Fig. IV-4.

² *Id.* at 76, Fig. IV-6 & 77, Fig. IV-7.

³ Reply Comments of National Fuel Gas Distribution Corporation, Case 22-G-0610 (Apr. 18, 2023), at 10.

The PSC has also declined to require specific quantifiable targets for gas utilities in reducing emissions when considering gas investments versus investments in gas alternatives in recent rate cases, citing the fact that “the CLCPA contains no mandates related directly to the State’s gas distribution systems.”⁴

Recently, NYSEG and RG&E, subsidiaries of Avangrid, have attempted to leverage the Commission’s final order on NFG’s long-term plan to suggest that their own long-term plan is consistent with New York’s climate mandates.⁵ NYSEG and RG&E’s assertion is noteworthy (and concerning) because the companies initially modeled two scenarios—styled as “CLCPA Hybrid Heating” and “CLCPA Full Electrification”—that the companies contended achieved CLCPA-consistent emission reductions, yet subsequently selected a *different* approach that achieves substantially *fewer* greenhouse gas emission reductions than these two scenarios as their long-term plan. When pressed regarding the consistency of their selected approach with the CLCPA emission mandates, the companies relied on the PSC’s NFG order to assert that because their plan “provides for significant GHG emission reductions and makes meaningful contributions to the GHG emissions reduction goals of the CLCPA,” it is therefore consistent with the CLCPA’s emission mandates.⁶

Under all of the scenarios modeled in the Integration Analysis for the Climate Action Council’s Scoping Plan, buildings sector emissions decline by 90 to 95 percent from 2020 levels,⁷ meaning that in all scenarios the buildings sector achieves far greater than a proportional 85 percent reduction in emissions from 1990 levels. However, as demonstrated, gas utilities are proposing plans that achieve considerably fewer emission reductions and the PSC has thus far declined to reject utilities’ rate case proposals and long-term plans citing lack of sector-specific regulation. Without a backstop and enforceable limit, this behavior will likely continue, to the detriment of customers and all New Yorkers.

⁴ Order Adopting Terms of Joint Proposal, Establishing Rate Plans and Reporting Requirements, Cases 20-E-0380, 20-G-0381 and 19-M-0133 (Jan. 20, 2022), at 80.

⁵ Reply Comments of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, Case 23-G-0437 (Jan. 22, 2024), at 5-6 (citing the PSC’s final order on NFG’s Long Term Plan).

⁶ *Id.* at 6.

⁷ NYSERDA & DEC, Integration Analysis Technical Supplement, Appendix G to the New York State Climate Action Council Scoping Plan (Dec. 2022), at 32.

The lack of clarity regarding emissions reduction requirements in the buildings sector is a major impediment and wastes state, ratepayer (ratepayers also foot the bill for utilities' filings and time spent in proceedings, among other costs), and stakeholder resources because it is impossible to engage in effective planning when the end goal that is being planned toward is not broadly agreed upon. Absent some degree of constraint on emissions specifically from the buildings sector, gas system planning processes in New York will continue to be mired in disagreement regarding sectoral goals. Disagreement and lack of clarity from state agencies works in the favor of utilities, which take advantage of the status quo to pursue long-term strategies and investments that significantly reduce the rate and degree of buildings sector decarbonization, making it harder and harder to achieve the CLCPA mandates.

(3) DEC is required by the CLCPA to set regulations that include measures to specifically reduce emissions from the buildings sector

The CLCPA requires DEC to promulgate regulations that, among other things: (i) include legally enforceable emissions limits, performance standards, or measures or other requirements to control emissions from greenhouse gas emission sources; (ii) reflect substantially the findings of the Climate Action Council's Scoping Plan; and (iii) include measures to reduce emissions from sources that have a cumulatively significant impact on statewide greenhouse gas emissions, including specifically, boilers or furnaces that burn oil or natural gas.⁸

The buildings sector is the largest source of greenhouse gas emissions in New York State, representing 31% of total emissions,⁹ and includes, specifically "boilers or furnaces that burn oil or natural gas." Therefore, DEC must either incorporate buildings-sector-specific emissions targets within the cap-and-invest program or otherwise comply with the above requirements of the CLCPA through a separate emissions limit regulation. However, even a separate emissions limit regulation would need to be considered within a comprehensive cap-and-invest program and would present an opportunity for establishing a broader regulatory framework to align on the required emissions reduction outcomes of the CLCPA.

We recognize that incorporating sector-specific emission limits within a broader cap-and-invest program may have implications for market liquidity that could constrain allowance trading or

⁸ Environmental Conservation Law, § 75-0109(2)(b),(c),(d).

⁹ N.Y. Dept. of Env'tl. Conservation, 2023 Statewide GHG Emissions Report (Dec. 2023), at vi, Tbl. ES.3 (reporting 2021 New York State GHG emissions by economic sector).

pose challenges for enforcement. However, as set out above, there are significant unintended consequences that will result if gas utilities' spending and investment in gas infrastructure are not effectively checked. Even as New York continues to be a leader in pursuing ambitious climate goals, a multi-pronged policy approach will be necessary to tackle the challenges posed by the pressing need to decarbonize our buildings while also achieving the necessary equity and emission reduction results.

Thank you for your consideration. We look forward to continuing this work with you toward developing a program to reduce harmful climate-altering greenhouse gas emissions, improve public health outcomes, and help combat climate change while advancing environmental justice and investing in disadvantaged communities statewide.

Respectfully submitted,

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