TESTIMONY
OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP
BEFORE THE
JOINT HEARING OF THE SENATE FINANCE AND ASSEMBLY WAYS & MEANS COMMITTEES REGARDING THE
FISCAL YEAR 2017-2018 ENVIRONMENTAL AND ENERGY BUDGET PROPOSALS
February 13, 2017
Albany, N.Y.

Good afternoon. My name is Blair Horner and I am the Executive Director of the New York Public Interest Research Group (NYPIRG). With me today is Robert Semon, policy associate and a senior at the College of Staten Island. NYPIRG is a non-partisan, not-for-profit research and advocacy organization. Consumer protection, environmental preservation, public health, healthcare quality, higher education affordability, and governmental reforms are our principal areas of concern. We appreciate the opportunity to testify on the Governor's executive budget proposals for the environment and energy.

As you evaluate the budget for environment and energy consider, the following: Scientists have declared 2016 as the hottest year on record. *Ever*. It surpassed 2014 and 2015, the previous hottest years on record.[1] New Yorkers, who have suffered through extreme weather events like Superstorms Sandy, Irene and Lee, need no reminder that surging tides and floods, extreme heat spells, deluges of rain and snow falls so thick as to stranglehold infrastructure for days on end are the new normal. Climate change is not just an environmental issue: A warming climate is affecting New York's agricultural and tourism sectors; deteriorating air quality results in more emergency room visits, illnesses and deaths; extreme heat causes an increasing number of deaths; and heat and frequent severe weather significantly increases the demands placed on the state's infrastructure, particularly our rickety electric grid.

Our written testimony comments on a number of proposals advanced by the Administration. However, this testimony will more closely examine two issues: (1) The needs for better protections for the state's drinking water supplies; and (2) The need for the Legislature to pull the plug on the Administration's scheme to bailout three aging, inefficient nuclear power plants on Lake Ontario.

NYPIRG supports making the state's 50% renewable energy by 2030 goal enforceable. However, we vigorously oppose subsidizing energy sources that are not truly renewable; particularly the $7.6 billion bailout of four nuclear power plants on Lake Ontario. We will discuss that in more detail later.

WATER INFRASTRUCTURE

The Governor's budget proposes to spend $2 billion for drinking water, waste water, and source protection projects over five years, at a rate of $400 million per year, to be financed through bonds issued by the Environmental Facilities Corporation. Eligible project types include drinking water infrastructure, waste

[1] Gilles, J., "Earth Sets a Temperature Record for the Third Straight Year," *The New York Times*, January 18, 2017, see: https://mobile.nytimes.com/2017/01/18/science/earth-highest-temperature-record.html.

9 Murray Street, Lower Level ♦ New York, NY 10007-2272 ♦ 212-349-6460 ♦ Fax 212-349-1366
REGIONAL OFFICES: CAPITAL DISTRICT, HUDSON VALLEY, LONG ISLAND, NEW YORK CITY, SOUTHERN TIER, WESTERN AND CENTRAL NEW YORK

NEW YORK PUBLIC INTEREST RESEARCH GROUP FUND, INC. ♦ WWW.NYPIRG.ORG

Recycled paper

water infrastructure, regional water infrastructure, land acquisition, green infrastructure, water quality improvement, replacement of lead pipes, and a study for consolidation of water systems.

NYPIRG supports proposals to direct billions of dollars towards water infrastructure: examination, testing, and repair of water storage and transport apparatuses that are necessary to the state's nearly 20 million residents and their most basic need for potable, clean water. The estimated price tag for drinking water improvements alone is an estimated $38.7 billion in 2008 dollars.[2]

In addition to threats from toxic chemicals from a variety of sources, New York is also facing crumbling water infrastructure. The American Society of Civil Engineers has graded New York a "D" for wastewater and a "C" for drinking water.[3]

Moreover, the state needs to do more to monitor drinking water quality. Currently, only public drinking water supplies in New York are tested regularly for contamination. It is estimated that nearly two million New Yorkers rely on private wells for their drinking water.[4] These residents may unknowingly be drinking water that is not safe for human consumption. Groundwater can be contaminated by leaking fuel tanks, chemical spills, agricultural run-off, industrial activities, and other sources, both manmade and naturally-occurring.[5]

The Article VII legislation would ensure that prospective buyers and tenants of a property know what is in their drinking water and enable them to take precautions, as necessary, to protect their health. In addition, it will provide valuable data to state and local agencies concerning potential environmental threats that could be occurring in the vicinity of the well. This will enable state and local agencies to warn neighboring properties that their drinking water may also be at risk, and to identify and remediate potential sources of contamination.

The Governor also sets the goal of protecting public water supplies in the age of the threats posed by conventional and cyber terrorism—a goal that no one can quarrel with. Studying the vulnerabilities seems like a good idea, one which the state likely could undertake without specific authorizing legislation. The problem with this legislation, however, is that it would also create an entirely new and unnecessary exemption for the reports directed to be created by this legislation. And therein lies the problem. Under the current and longstanding exemption in the state's Freedom of Information Law ("FOIL"), agencies may withhold requested records when "if disclosed could endanger the life or safety of any person." Public Officers Law section 87(2)(f).

Not only is this proposed new exemption superfluous, *it would exempt the records in perpetuity* so that even when any risk associated with disclosure had evaporated, the records still could not be furnished under a FOIL request. This approach was rejected after 9-11 and should be rejected again in 2017.

In light of the fact that agencies have ample tools under FOIL to protect the public from the release of sensitive information, the new exemption provision would set a dangerous precedent. As FOIL is a

---

[2] New York State Department of Health "Drinking Water Infrastructure Needs of New York State," November 2008, see: https://www.health.ny.gov/environmental/water/drinking/docs/infrastructure_needs.pdf, page 16.

[3] American Society of Civil Engineers' New York State Council. *2015 Report Card for New York State's Infrastructure.* Sept. 2015, see: http://www.infrastructurereportcard.org/wp-content/uploads/2015/09/NY_ReportCard_FullReport_9.29.15_FINAL.pdf.

[4] Cornell Cooperative Extension, "Private Wells, Groundwater, and Public Water Supply Systems," see: http://waterquality.cce.cornell.edu/supply.htm.

[5] United States Department of the Interior, U.S. Geological Survey, "Contamination in US Private Wells," see: http://water.usgs.gov/edu/gw-well-contamination.html.

cornerstone of keeping government open and accountable, it is essential that this sunshine law is not undermined by a thousand cuts.

$7.6 BILLION BAILOUT OF UPSTATE NUCLEAR POWER PLANTS

While not part of the budget, this issue will have a huge financial impact on every resident, local government, non-profit group and business in the state and divert funds from more rapidly transitioning to clean, green renewable energy. We urge that you use the budget as a way to block an enormous increase in electricity costs to bailout four aging and inefficient nuclear power plants located on Lake Ontario.

On August 1st, the Cuomo Administration acting through the state's Public Service Commission (the "Commission") announced its plan for boosting certain sources of electricity to meet the state's clean energy goals.[6] Unfortunately, the Administration's plan is heavily dependent on fuel powered from nuclear sources – not considered "green."

It would make the State Energy Plan goal of New York State generating 50 percent of its electricity from renewable sources by 2030 enforceable, and also require a statewide reduction in emissions of 40 percent from 1990 levels by 2030. In order to accomplish these goals, the Clean Energy Standard mandates that electric utility companies purchase Zero Emission Credits (ZECs) and Renewable Energy Credits (RECs). All utilities under PSC's jurisdiction are required to participate, including municipally owned utilities; the New York Power Authority and Long Island Power Authority are not under PSC's jurisdiction, but are participating. The compliance period for RECs began on January 1, 2017 and for ZECs will begin on April 1, 2017.

Instead of using these subsidies to more deeply invest in wind, solar and other truly green technologies or giving beleaguered ratepayers a break, an estimated $7.6 billion bailout ("*Cuomo Utility Tax*") would suck up resources to make unprofitable plants from an anachronistic industry profitable.

As seen below, the estimated costs are enormous.

TOTAL COST TO ALL RATEPAYERS OF NUCLEAR BAILOUT[7]

Dates	Annual Cost	Aggregate Cost
04/17 - 03/19	$488,761,270	$977,522,539
04/19 - 03/21	$547,035,250	$1,094,070,499
04/21 - 03/23	$596,471,470	$1,192,942,939
04/23 - 03/25	$664,135,570	$1,328,271,139
04/25 - 03/27	$736,494,730	$1,472,989,459
04/27 - 03/29	$811,063,330	$1,622,126,659
TOTAL, 12 Years		**$7,687,923,235**

Below are the estimated costs that residential ratepayers will see directly.

[6] Governor Cuomo, Press Release, "Governor Cuomo Announces Establishment of Clean Energy Standard that Mandates 50 Percent Renewables by 2030," see: https://www.governor.ny.gov/news/governor-cuomo-announces-establishment-clean-energy-standard-mandates-50-percent-renewables.

[7] Public Utility Law Project of New York, analysis conducted for NYPIRG. September, 2016.

DIRECT IMPACT OF NUCLEAR BAILOUT ON RESIDENTIAL RATEPAYERS[8]

Utility Region	Number of residential customers	Bill Impact on Residential Ratepayers ($ millions)
Central Hudson	213,187	$87.9
Con Edison	2,868,462	$705.8
LIPA/PSEG	1,002,942	$501.4
New York State Electric & Gas	763,590	$348.4
Niagara Mohawk	1,164,691	$465.1
Orange & Rockland	195,446	$84.8
Rochester Gas & Electric	331,367	$138.4
TOTAL	**6,539,685**	**$2,331.7**

New Yorkers' money will go to plant owner Exelon, a Chicago-based Fortune 100 company worth over $30 billion.[9]

As seen above, *everyone* who pays for electricity in New York will be hit by the tax: residents, businesses, municipalities, hospitals, schools, etc. ConEd *residential* customers will see their bills go up by $700 million, Long Islanders by $500 million, and National Grid consumers by $465 million. The *rest* of the tax will be paid by cash-strapped local governments and school districts, as well as businesses large and small, and even charitable organizations.

It's important to understand that over 800,000 New Yorkers are already behind on their utility bills, and many more are struggling to make ends meet. They cannot afford this tax.

NEW YORK RESIDENTIAL RATEPAYERS *ALREADY* HAVING A HARD TIME PAYING THEIR ELECTRIC BILLS[10]

Utility	Date of Data	# Ratepayers in Arrears More than 60 Days	# Termination For Nonpayment-All
Orange & Rockland	12/16/2016	17,003	222
Central Hudson Gas & Electric	12/12/2016	10,207	746
Consolidated Edison	12/15/2016	299,728	6,032
Niagara Mohawk (National Grid)	12/15/2016	215,392	598
Rochester Gas & Electric	12/20/2016	59,504	258
New York State Electric & Gas	12/20/2016	85,533	150
LIPA/PSEG	3/31/2016	117,808	1,197
TOTALS		**805,175**	**9,203**

New York's energy future lies with energy efficiency, smarter grids, solar and wind. These approaches cost less, create more jobs, and result in healthier communities. A recent analysis shows that phasing out nuclear power immediately and investing in renewables would ultimately save New Yorkers $6.5 billion

[8] *Ibid.*
[9] *Forbes, Inc.*, Market Cap as of May 2016, see: http://www.forbes.com/companies/exelon/.
[10] Chart identifies the number by utility region, source, New York State Department of Public Service, see: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=1331&MNO=91-M-0744. Information collected in January, 2017.

on their electricity bills and reduce more emissions than nuclear plants.[11] Despite this, the Public Service Commission has not seriously considered truly clean energy alternatives to bailing out these dangerous and outdated nuclear plants.

First, many more jobs would be created by constructing and operating new wind and solar plants. Independent, peer-reviewed research indicates that moving New York to 100 percent clean energy in all sectors would create at least 82,000 net new jobs. Second, about half of the fewer than 2,000 current nuclear plant employees would retain their jobs for years as they help shut down the plants.[12]

Ironically, the state already has a blueprint for handling nuclear plant closing transitions as revealed by examining the Administration's plan to close the Indian Point Nuclear Facility. The Cuomo Administration has announced plans to close the Indian Point Nuclear Facility which produces roughly one-quarter of the electrical power for New York City and Westchester.[13] To alleviate the loss of jobs and local revenues, the Executive has announced that workers will be able to access NYSERDA job training in renewable energy and the facility operator (Entergy) will create a $15 million fund for environmental and community projects in the area.

Not only is the $7.6 billion nuclear bailout a huge hit to ratepayers and terrible policy, the process that produced it was opaque and deeply flawed. Governor Cuomo directed the Public Service Commission to insert this multibillion dollar bailout into the Clean Energy Standard last year, apparently without considering alternatives.[14] Over the summer, the estimated bailout cost went up astronomically with no warning. Three weeks later it was approved with almost no time for public input.

Nuclear power is a 20th Century technology that cannot compete in a 21st Century energy world. The technology, always unsafe, is too expensive, unreliable, and simply not needed in an era that will increasingly rely on alternative energy sources, a modern grid and efficiency. The clearest evidence that such an analysis applies in New York is that these plants would otherwise be phased out if it were not for public subsidies.

There are powerful reasons why bailing out the upstate nuclear power plants is a bad idea, beyond the financial impacts on ratepayers.

It is not at all clear that the power generated by these plants is needed. According to the New York Independent System Operator, state electricity demand has been flat. "Year-over-year growth in the overall usage of electric energy from New York's bulk electric system is expected to flatten or decline slightly over the next decade. While peak demand is projected to grow, it is expected to increase at a more moderate pace than previously forecast."[15]

---

[11] Cebulla, F. and Jacobson, M., "Alternative renewable energy scenarios for New York," Mr. Cebulla is from the German Aerospace Center (DLR), Institute of Engineering Thermodynamics, Department of Systems Analysis and Technology Assessment, Germany, and Professor Jacobson is from the Department of Civil and Environmental Engineering, Stanford University. Report released to PSC, November 8, 2016, available at: http://www.stopthecuomotax.org/wp-content/uploads/2016/11/New_York_Energy_Analysis.pdf.

[12] Jacobson, M., "Invest in Clean Energy, Not Nukes," *Times Union*, July 29, 2016, see: http://www.timesunion.com/opinion/article/Invest-in-clean-energy-not-nukes-8633883.php.

[13] Siff, A., "Indian Point Nuclear Plant to Shut Down by 2021: Sources," *NBC News*, see: http://www.nbcnewyork.com/news/local/Indian-Point-Nuclear-Plant-Shut-Down-2021-New-York-State-Deal-Entergy-409921775.html.

[14] Governor Cuomo, Press Release, "Governor Cuomo Directs Department of Public Service to Begin Process to Enact Clean Energy Standard," December 2, 2015, see: www.governor.ny.gov/news/governor-cuomo-directs-department-public-service-begin-process-enact-clean-energy-standard.

[15] New York Independent System Operators, "Power Trends 2016: The Changing Energy Landscape," p. 1.

In November 2015, Entergy Corporation announced plans to retire the FitzPatrick Nuclear Power Plant based on the continued "deteriorating economics of the facility."[16] That logic was supported by a *New York Independent System Operator ("NYISO") review,*[17] *based on the most current long-term forecast of electric demand, did not identify any resource adequacy or transmission security reliability needs relating to a FitzPatrick deactivation.*[18] In other words, if Fitzpatrick shut down, there would be little apparent impact on the electricity needs of New Yorkers.[19]

On its face, it's obvious that if the state dedicates billions of dollars to subsidizing nuclear power, it will have less to invest in alternative energy sources, as well as efficiency and conservation measures.

Over the past decade, the renewable energy industry has been growing dramatically.[20] Renewable energy, energy efficiency and energy storage technologies are continuing to enjoy rapid cost reductions and huge increases in efficiencies and overall production. Yet, nuclear power is an inefficient mid-20th century technology, in New York so much so that the Governor is planning to spend billions to prop them up.

All nuclear reactors pose a safety risk. An accident can occur in any nuclear reactor, causing the release of large quantities of radiation into the environment. Even during normal operations radioactive materials are regularly discharged into the air and water.

The cumulative effects of aging nuclear reactors, in particular the effect of prolonged operation on materials and large components, is endemic throughout the world's nuclear industry. The industry is fighting the costly effects of its aging plants at the same time nuclear operators are continually trying to reduce costs due to both greater competition in the electricity market and the need to meet shareholder expectations.

At the same time he has worked to close Indian Point, the Governor has argued that nuclear plants are "emissions free" because they do not emit carbon dioxide. While nuclear power generation emissions may be carbon free, the life cycle of mining and shipping nuclear materials to serve as fuel poses significant risks to miners and creates environmental impacts. In addition, vast amounts of fossil fuels must be burned to mine, transport and enrich uranium to fuel these nuclear plants.

Nuclear reactors do emit radioactive pollutants and generate large amounts of radioactive waste. Nuclear reactors also experience radioactive leaks and spills, which contaminate ground water. In 2011, an investigation by the Associated Press found that almost 75% of nuclear plants in the U.S. had experienced a radioactive tritium leak at some point.[21]

Every year, these plants generate tons of highly dangerous radioactive waste. The federal government and the nuclear industry have spent decades looking for a permanent solution to dispose of this waste safely, and they have come up empty handed. The current plan is to leave it on-site indefinitely.

---

[16] Shallenberg, Krysti, "Entergy Announces Plans to Retire NY's FitzPatrick Nuclear Plant," *Utility Dive*, November 15, 2015, see: www.utilitydive.com/news/entergy-announces-plans-to-retire-nys-fitzpatrick-nuclear-plant/408424/.

[17] NYISO is the nonprofit entity that is responsible for planning for, coordinating and managing New York's wholesale energy marketplace, including ensuring that there is adequate power supply to meet forecast demands.

[18] Emphasis added, ISO p. 49.

[19] Opalka, W, "NYISO: FitzPatrick Closure will not Harm Reliability," *RTO Insider*, May 2, 2016, see: http://www.rtoinsider.com/nyiso-fitzpatrick-reliability-25732/

[20] Randall, T., "Wind and Solar Are Crushing Fossil Fuels," *Bloomberg*, April 6, 2016, see: https://www.bloomberg.com/news/articles/2016-04-06/wind-and-solar-are-crushing-fossil-fuels.

[21] *CBS News,* "Radioactive leaks found at 75% of US nuke sites," June 21, 2011, see: http://www.cbsnews.com/news/radioactive-leaks-found-at-75-of-us-nuke-sites/.

TOXIC WASTE CLEAN UP FUNDING

NYPIRG appreciates that the Governor's proposed budget follows through on the 2015 commitment to fully fund toxic waste clean-ups through the state's Superfund ($1 billion) and Brownfields programs. The state should move quickly to remediate toxic waste sites from communities across the state to protect health and the environment.

ENVIRONMENTAL PROTECTION FUND

NYPIRG supports the Governor's continued funding of the Environmental Protection Fund at last year's level of $300 million. The maintenance of this protection of the state's natural resources is key to maintaining the beauty of New York, from the Great Lakes, to the mountains of the Adirondacks to the banks of the Hudson and the shores of Long Island.

NYPIRG supports the proposal for $88 million development of a cogeneration and microgrid for Empire State Plaza. Hopefully this project's success will serve as a template for future, larger scale implementation and help New York to continue leading in innovation.

NYPIRG supports the continued commitment to last year's proposal to undertake a Large Scale Renewable Energy Master Plan, through the current budget's grand total pledge of $360 million to support 11 large-scale renewable energy projects throughout the state by 2020, one of which is a wind farm off the coast of Montauk, slated to produce an estimated 90 megawatts to power homes across Long Island.[22]

DIESEL EMISSIONS

Diesel emissions are a significant public health problem. Under the Diesel Emissions Reduction Act ("DERA") New York's 2010 original deadline for retrofits of agency fleets and state contactors to reduce large vehicle diesel emissions has been extended over several budgets. NYPIRG urges that the state fleet be fully compliant and that it press its contractors to meet the diesel emissions standards to remove pollutants from the air and protect public health.

We appreciate the opportunity to share our views on the energy and environment budget.

[22] Cardwell, D., "Off Long Island, Wind Power Tests the Waters," *The New York Times,* January 21, 2017, see: https://www.nytimes.com/2017/01/21/business/energy-environment/offshore-wind-energy-long-island.html?_r=0.