

February 14, 2023

To: The Assembly Committees on Ways and Means Environmental Conservation, Energy, Corporations, Commissions and Authorities and Ways and Means and the Senate Committees on Finance, Environmental Conservation, Energy and Telecommunications, and Corporations

From: Laurie Wheelock, Executive Director and Counsel, the Public Utility Law Project of New York

Re: FY 2024 New York State Environmental Conservation Budget Hearing

Good afternoon, Members of the Joint Legislative Budget Hearing on Environmental Conservation. Thank you for the opportunity to provide written testimony today. My name is Laurie Wheelock, and I'm the Executive Director of the Public Utility Law Project ("PULP").

PULP is the only independent nonprofit in NYS that advocates specifically for low-income utility customers. Throughout the pandemic, our organization worked diligently to assure residential utility services were not cut due to nonpayment. We advocated for the State's assistance to address the approximately \$1.5 billion dollars of arrears accumulated by more than 1.3 million households who faced threat of termination due to the severe economic downturn. PULP also expanded our direct services team to help put individual customers back on the path towards financial stability and affordability.

This hearing is especially timely as New Yorkers are dealing with large winter bills resulting from soaring home energy costs due to high supply commodity costs, along with the need for increased usage due to the cold temperatures and shorter daylight hours. Commodity volatility and low supply are already resulting in unaffordable bill increases that are exacerbated by double-digit delivery increases approved in rate cases.

As an aside, I'd like to remind you that electric and gas utility bills are regressive, that is, households tend to use the same amount of energy regardless of income. Low-income households have been stretched thin for years, but this heating season has hit many households especially hard. Starting in the month of September, PULP's call and email volume began to increase with consumers asking for help in preparation for winter costs, as well as requests for virtual trainings and in-person events to offer direct assistance.

Governor Hochul's budget includes two new proposals that seek to address energy affordability needs for New Yorkers. PULP is thankful that the Governor included these in her proposed budget as they show a commitment to helping utility customers during these difficult times. What follows is our review of these proposals, as well as our recommendations when it comes to the FY 2023-24 Budget. Before presenting PULP's analysis of the two proposals, however, I'd like to discuss a major problem with the State's utility low-income discount program, which, if not remedied, would undermine the effectiveness of the Governor's proposals.

A. New York State must address under enrollment in the electric/gas utilities' Energy Affordability Policy programs so that every low-income New Yorker benefits from bill credits that will lower their energy burden to no more than 6% of their monthly income.

i. Background on the Energy Affordability Policy

In 2016, New York State took an important step towards affordability when it established a policy that no low-income utility customer should spend more than 6% of their monthly income on their energy bills.¹ The Public Service Commission (“PSC”) directed each regulated energy utility company, electric and natural gas, to develop a monthly low-income discount program to assist with lowering bills to achieve the 6% goal. The amount of the discount is based on census data and typical utility bills, not on an individual household’s financial circumstances. Once enrolled in the Energy Affordability Program (“EAP”), the low-income customer receives credits on their monthly bills designed to ensure that the “average” low-income households are not spending more than 6% on their energy bill.

There are three primary ways a low-income utility customer can be enrolled in their utility company’s monthly bill discount program. The first is when the customer applies and is approved for the Home Energy Assistance Program (“HEAP”), which provides a one-time grant towards their heating costs.² The utility receiving the actual HEAP grant will automatically enroll the customer in the EAP.

The second way is through a very limited data match with the Office of Temporary Disability and Assistance (“OTDA”), which sends each electric/gas utility a file with the low-income customers who have received HEAP. This is particularly helpful in cases where a customer heats primarily with natural gas but also receives electric service through a different utility. Absent this file match, the electric utility would have no idea whether a customer has qualified for HEAP since those funds are disbursed directly to the utility that provides the heating source.

Lastly, the third means of entry into the EAP is by self-enrollment through the utility company’s application. Customers applying must complete a form and provide proof that they’re currently enrolled in one qualifying assistance program such as SNAP, Social Security Income, Lifeline telephone or some other additional programs.³

For downstate residents, there is also a fourth, significantly more robust, way to gain access to a utility discount program. Currently, NYC Human Resources Administration (“HRA”) data matches information showing recipients of any one of seven public benefit programs (not just

¹ Case 14-M-0565, Order Adopting Low Income Program Modifications and Directing Utility Filings, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers (May 20, 2016) at 8.

² See, NYS OTDA website on HEAP, <https://otda.ny.gov/programs/heap/>.

³ See, EAP applications for each of the major electric/natural gas regulated utilities to view the entire universe of financial assistance programs that qualify someone for the EAP; <https://www3.dps.ny.gov/W/AskPSC.nsf/All/E70DFECA512D19DD852588630060A17A?OpenDocument>; It’s important to note that the Joint Utilities have agreed to accept the same financial assistance programs for EAP enrollment which includes SSI, SNAP, Medicaid, Federal Public Housing Assistance, Veterans Pension and Survivor Benefits, Bureau of Indian Affairs General Assistance, Tribal Temporary Assistance for Need Families (TANF), Food Distribution Program on Indian Reservations, Tribal Lands Head Start, Lifeline Telephone Service Program; PSEG-LI has it’s own list of qualifying programs which are fewer than the Joint Utilities, <https://www.psegliny.com/myaccount/customersupport/financialassistance/householdassistance>.

HEAP) that are available for self-enrollment with both Consolidated Edison and National Grid NYC four times a year. With one exception, no other government social services agency does this type of data match. Westchester County agreed to data match with Consolidated Edison in the 2016 rate case. Unfortunately, data matching did not occur for over two years during the pandemic, which remains a significant concern to PULP.⁴

Finally, it's important to note that the EAP is currently paid for by ratepayers. The way the program works is that each utility company sets an annual budget that is no more than 2% of the utility's revenues.⁵ Essentially, that 2% cap determines how much can be spent annually on the EAP by utility. PULP believes that this cap is setting the EAP up for failure. The utilities know that their programs have this 2% cap and have little to no incentive to hit the cap. PULP's own numbers estimate that increasing the cap by 1% would cost ratepayers \$300 million.⁶ It's very important for the State to first understand how this program works, before determining how to expand or change it.

ii. Under-enrollment in the EAP is a significant problem that requires significant financial assistance from NYS to solve.

For those households enrolled in their electric/gas utility company's EAP, the program provides important monthly financial relief. For instance, National Grid Upstate customers can receive anywhere from \$3 to \$28 off their monthly bills depending on the type of utility service they have and their income tier.⁷ Unfortunately, PULP estimates that less than half of eligible households are enrolled in their utility EAPs, resulting in the exclusion of 1.1 – 1.2 million households from needed benefits. Moreover, PULP estimates that as of July 2022, NYS has a \$1.75 Billion dollar affordability gap comprising all the low-income households, whether or not they are enrolled in EAP.⁸ Moreover, not everyone who is in the EAP is receiving the correct benefit amount to lower their energy burden to the 6% target.

iii. Matching of data showing enrollment in any program administered by OTDA should become required by law as it is the most efficient and fastest way to boost enrollment in the EAP.

PULP believes that mandating and strengthening the data matching process will be a fast and efficient method for increasing enrollment and narrowing the energy affordability gap. To begin,

⁴ See, Cases 22-E-0064 & 22-G-0065, Proceedings on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Consolidated Edison Company of New York for Electric and Gas, Direct Testimony of William D. Yates, CPA, for the Public Utility Law Project of New York, at 30 (May 20, 2022).

⁵ A funding limit is established such that the total budget for each utility may not exceed 2% of total electric or gas revenues for sales to end-use customers, Order Adopting Low Income Program Modifications and Directing Utility Filings, Matter No. 14-M-0565, (May 20, 2016) at 3.

⁶ See: Comments of the Public Utility Law Project of New York on the February 4, 2021, Staff Report on New York State's Energy Affordability Policy, Case 14-M-0565, at 14. Available at:

<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5A7B0D79-9ACD-4F51-A3DC-653CF62735A8}>. For the most recent update of U.S. Census Bureau data used by PULP to measure utility unaffordability, see: Public Use Microdata Areas (PUMAs), U.S. Census Bureau. Available at:

<https://www.census.gov/programs-surveys/geography/guidance/geo-areas/pumas.html>.

⁷ National Grid upstate's current EAP levels, <https://www.nationalgridus.com/Upstate-NY-Home/Bill-Help/Energy-Affordability-Program>; income tier is parallel to the HEAP tiers established by OTDA

⁸ See, 14-M-0565, June 2022 EAP Quarterly Reports; PULP's estimates are a compilation of the all the utility data for enrollment as of June 30, 2022, EAP Quarterly Reports and the 2019 Census.

while self-enrollment is possible, most people remain unaware generally of the program unless they're already in it. Moreover, the application for self-enrollment can be difficult for customers as they need to either upload or make copies/mail in their proof of a qualifying benefit to the utility. Some customers struggle to locate the appropriate proof, such as a current benefit award letter, so that they can prove their eligibility. As a result, PULP firmly believes that required data matching is the best, most efficient, and least stressful means of enrollment for the low-income customer.

Unfortunately, comprehensive data matching is not currently required under the law. As discussed above, there is only an OTDA HEAP match and it's important to note that not all low-income households receive HEAP. Moreover, very few counties voluntarily data match, such as Westchester County DSS and NYC HRA, and in the case of Westchester, they haven't matched on a regular basis. Other regions of New York, such as Upstate and Long Island, have historically opted not to use data matching.

Historically, the Department of Public Service ("DPS") and the PSC have expressed support for improving data sharing. In 2021, the Department wrote: "establishment of a standardized statewide file matching system that can capture critical information for purposes of not only matching electric and gas low-income customers, but also other low-income utility customers so that the Commission can consider future program enhancements."⁹ Consumer advocates have requested this since at least 2016. PULP believes now is the time. A uniform, statewide data sharing process should be established.

iv. In a directive to the Low-Income Task Force, Governor Hochul appears to be supportive of efficiency programs and policies, such as data matching, which are meant to help utility customers. However, data matching should be explicitly required by law to ensure that the program is implemented properly and will occur on a mandated basis.

In Governor Hochul's briefing book for the State of the State, she directs the Low-Income Task Force "that administer energy affordability programs, to undertake immediate efforts to improve the alignment of existing programs and streamline administrative processes to increase access to services and the impact of public dollars."¹⁰ This language is welcome and suggests that specific actions like data matching would be considered by this Task Force. Unfortunately, PULP has reviewed the budget bills and we do not see a proposed mandate to require any specific action, such as implementing comprehensive data matching. As a result, we assume that the references in the State of the State are aspirations without a legal mandate. Moreover, as noted above, the issue of comprehensive data matching has been on the table since 2016, the same year the Task Force was established.

PULP encourages the legislature to require comprehensive data matching in the law as it will hold OTDA and the utilities accountable for establishing a strong program that would automatically add people to the EAP. In 2022, the NYS Assembly passed legislation that would have required data matching to occur at least twice a year. PULP urges the inclusion of A.9099A (2022 Cusick)/S.8362A (2022 Parker), which would order OTDA to automate the process in a

⁹ See, cases 14-M-0565, 20-M-0266, Oder Adopting Energy Affordability Policy Modifications and Directing Utility Filings, at page 11 (August 12, 2021).

¹⁰ 2023 State of the State Briefing Book at 133; see also, <https://www.budget.ny.gov/pubs/archive/fy23/ex/book/briefingbook.pdf>

manner similar to what HRA currently does in New York City. This legislation is a great starting point, but additional safeguards should be put into place to further increase the processes' effectiveness and maintain transparency and accountability. For instance, requiring OTDA to report publicly in a timely manner every time an automated data match occurs or fails to occur would give lawmakers the necessary data to scrutinize the program and make further reforms if necessary.

Moreover, writing into law that data points should include but not be limited to, first/last name, address, account number, phone number, and the last four digits of one's social security number, will help improve the accuracy of the data match, which historically has been error-prone. Providing more specific data points will increase the chances of matching a low-income customer between their utility company and OTDA.

B. Governor Hochul's budget includes two proposals involving energy affordability.

- i. The first proposal appears to involve the expansion of the EAP low-income discount program to include households that use electricity and earn less than the state median income, but currently don't qualify for the existing EAP.***

In the Governor's Executive Budget, she proposes broadening the eligibility requirements for the EAP.¹¹ The Budget Briefing Books states,

"\$200 million for DPS to provide relief to New Yorkers who are experiencing high electric bills. DPS will provide a monthly discount to more than 800,000 *electric utility customers* who are making *less than the state median income* and have not been eligible for the State's current utility discount program."¹² (*emphasis added*).

The language found with the appropriation is more specific and it states,

"For assistance to customers of utility affordability programs to be authorized by the Public Service Commission and administered by the Department of Public Service. The department **shall establish a new discount program** for such purpose, in consultation with the energy affordability policy working group, for **residential customers that do not currently qualify for the energy affordability policy program but whose income is below the state median income**. Residential customers of **electric** corporations regulated by the Public Service Commission and the Long Island Power Authority, and its service provider shall be eligible to participate in the discount program.....200,000,000."¹³

PULP is generally supportive of the Governor's proposal, but we want to clarify first whether this program is essentially proposing to expand the existing EAP low-income bill discount program. Additionally, we have the following questions and recommendations:

- **Question:** How is "state median income" aka "SMI" to be defined? Is "SMI" the best measure or should we also consider using "area median income" aka "AMI"?
 - **Consideration:** In PULP's research it's our understanding that SMI provides broader eligibility for people in areas where the median income is lower, and AMI uses more localized data. This may narrow eligibility in lower income areas and broaden eligibility in higher income areas.

¹¹ See, Page 25 of the FY2024 Budget briefing book.

¹² *Id.*

¹³ FY 2024 Executive Budget, Aid to Localities, A3003 / S4003 at 866.

- **PULP’s Recommendation No. 1** - For consistency purposes, the State should consider using NYSERDA’s definition of moderate income as it will help widen the universe of individuals while also providing consistency between programs. NYSERDA defines low-moderate income (“LMI”) households as those with incomes at or below the higher of 80% of area median income (AMI) or 80% of state median income (SMI).¹⁴
- **PULP’s recommendation No. 2** - If the State determines that instead of using NYSERDA’s definition, “SMI” is the best guidepost for expanding the EAP, PULP recommends using a consistent definition, by cross-referencing to the NYS Social Services Law § 410-w.

“For the purposes of this section, the term "state median income" means the most recent state median income data published by the bureau of the census, for a family of the same size, updated by the department for a family size of four and adjusted by the department for family size.”

- **Question:** How will these customers be enrolled in the expanded program? Will there be an application or self-attestation?
 - **Consideration No. 1:** Depending on the mechanism for enrollment, PULP cautions that having different enrollment requirements for the same program could be very confusing for customers. Moreover, the more complex the enrollment process, the more administrative costs could be incurred on the utilities’ end, which are costs that will likely be passed along to customers.
 - **PULP’s recommendation** - Rather than leave these details to the Energy Affordability Program Working Group to determine, it’s important that the State decide this now as implementation could require more funds that should not be borne by ratepayers. As discussed above, enrollment in the EAP currently occurs in at least three ways (OTDA’s HEAP match, receipt of an actual HEAP grant, or a self-certification application).
 - **Consideration No. 2:** Since this proposal seeks to broaden enrollment to incomes below the state median income, there will need to be some process in place to “prove” that someone’s income meets this qualification. Potential methods could include:
 - **PULP’s Recommendation No. 1: Annual tax filings** - (Ex. One could be asked permission upon filing their NYS taxes whether they believe they make less than the median income and would like the NYS Department of Finance to share their request with their utility for enrollment in the expanded EAP).
 - **PULP’s Recommendation No. 2: Self-Attestation** - Customers could self-attest with their utility that they make below the state median income. PULP generally warns against self-attestation as it requires the individual to act. However, through the budget process, if self-attestation is determined to be the appropriate mechanism, the utilities should be required to meet milestone self-attestation enrollment targets, and to, in

¹⁴ See, Matter No. 16-M-00681, In the Matter of the Clean Energy Fund Investment Plan, Clean Energy Fund Low-to Moderate-Income Chapter, by NYSERDA, June 15, 2020, at 4; WAP, HEAP, and utility bill payment assistance programs have established an income eligibility threshold of 60% of the SMI, while eligibility for housing assistance under the United States Department of Housing and Urban Development (HUD) extends to 80% of the SMI or AMI.

coordination with DPS, use direct outreach (e.g. contacting non-EAP customers) and advertising, outreach and education about the expanded discount.

- **Consideration No. 3** - PULP just warns that any application more than a page long will place more work on the customer. Moreover, it will also require processing of those applications by the utilities, which will be at the cost of ratepayers.
- **Question:** Is the \$200 million enough to assist over 800,000 customers on a monthly basis for the next fiscal year? Or is more needed?
 - **PULP's recommendation** - PULP's own research shows that there's under-enrollment in the existing EAP and not everyone is receiving the correct level of credits. As a result, PULP estimates that \$1.75 billion is needed to close the affordability gap. PULP proposes increasing the allocation here of \$200 million to at least \$1 billion to help infuse sufficient funds into the EAP.¹⁵
- **Question:** Is the \$200 million meant to help fund both expanding the EAP and also the energy affordability guarantee promised by EmPower Plus?
- **Question:** Have bill impacts been studied in relation to not receiving matching funds in the FY2025 budget? How would this affect rate payers if no state funding is received in FY2025 and the utilities want to maintain the program? (PULP hopes that funding included this year will be included annually thereafter).
- **Question:** These credits appear to be directed towards electric only customers. PULP supports efforts to move low-moderate income households off fossil fuels. We only flag that some customers have combined bills where they receive electric and natural gas, either for cooking or heating. We wonder how the credit would work for these types of customers (Would they only receive a credit on the electric delivery side of their bill? If so, can the utilities billing systems do this accurately?).
- **Question:** Moreover, will these customers be the same pool of individuals who were approved for the Empower Plus Program (discussed below)?
 - **PULP's recommendation-** If the new program only includes electric customers, DPS and the utilities should be required to advertise Empower-plus program to gas customers who have incomes below the state median income but who are ineligible for this credit because they have natural gas.

Again, while PULP is supportive of expanding the eligibility criteria to LMI households, we caution that not all low-income households are enrolled in it presently. We strongly encourage the State to pursue mechanisms that will rectify the under-enrollment issues among low-income households, ensure they are receiving the correct benefit amounts to which they are entitled to, and offset the costs so that they're shared more equitably among ratepayers, the state, and the utilities.

ii. The second proposal creates EmPower Plus and promises an energy affordability guarantee.

¹⁵ See, 14-M-0565, June 2022 EAP Quarterly Reports; PULP's estimates are a compilation of the all the utility data for enrollment as of June 30, 2022, EAP Quarterly Reports and the 2019 Census.

The Governor’s budget proposes,

The department shall also establish a program for such purpose to provide an **energy affordability guarantee to participating residential customers in the EmPower Plus Program** administered by the New York State Energy Research and Development Authority who electrify their homes in accordance with program standards required by the authority; provided, however, that **the department is authorized to establish a cap on a residential customer’s energy usage applicable to the guarantee when establishing such program.** Amounts appropriated herein may be disbursed to various utilities, including the Long Island Power Authority, based on their share of energy affordability policy program expenditures during calendar year 2022..... 200,000,000.”¹⁶ (**emphasis added**)

PULP understands this language to mean that NYSEERDA’s EmPower Plus Program is meant to work hand in hand with the Department’s Energy Affordability Guarantee. EmPower Plus will help low-income households make modifications to their home to electrify it and/or make it more energy efficient. Any household who does this through EmPower Plus would have their energy bills capped at no more than 6% of their income.

PULP is very supportive of NYSEERDA’s traditional EmPower program¹⁷ and are in favor of linking EmPower Plus with the Energy Affordability Guarantee. PULP does have a number of questions and recommendations on how to strengthen the budget language.

- **Question:** What are the eligibility requirements of the EmPower Plus program? Will they mirror those of the traditional EmPower Program? (Which has the same income eligibility requirements as HEAP.)¹⁸
 - **PULP’s recommendation** - To be successful, EmPower Plus should be streamlined to match the EAP’s eligibility requirements. Having the same income requirements as HEAP and the existing EAP will allow for a seamless transition from EmPower Plus into the existing EAP monthly low-income discount program.
- **Question:** will the energy affordability guarantee remain with the unit, even when a tenant or homeowner who received the guarantee moves?
 - **PULP’s recommendation** - The guarantee should remain with the unit and transfer upon the utility receiving the account application for service by the new tenant/homeowner.
- **Question:** There appears to be one \$200 million appropriation for NYSEERDA to operate the EmPower Plus Program¹⁹ and one \$200 million appropriation for both the expanded EAP program (electric customers with incomes below the median income who are not eligible for EAP) and this Energy Affordability Guarantee.
 - **Consideration:** The line-item language gives DPS authority to place a “cap on a residential customer’s energy usage applicable to the guarantee,” but there is no further specific information included.

¹⁶ See, FY 2024 Executive Budget, Aid to Localities, A3003 / S4003 at 866.

¹⁷ See, <https://www.nyserda.ny.gov/All-Programs/EmPower-New-York-Program>

¹⁸ See, <https://www.nyserda.ny.gov/All-Programs/EmPower-New-York-Program/Eligibility-Guidelines>.

¹⁹ See, FY2024 Executive Budget, Capital Projects, A3004/S4004 at 118.

- **Question:** What does “energy usage” mean? Is it purely kWhs over a specific period of time? Or does cost come into play or just actual consumption/usage? Will DPS set the energy usage cap for every utility or give the utility the discretion to do so? Will the cap be re-calculated on an annual basis? Does the cap consider household size, location (city, rural), utility, time of year etc?
 - **PULP’s recommendation** - Please add *kWh* to clarify that the cap will involve actual usage. Also, consider having specific caps for specific utilities, based on location/household size etc. There should be a recalculation on an annual basis, clear education and explanation on what/why the cap is set as it is etc. Moreover, both the utilities and the Department should be directed to provide clear outreach/education efforts to help customers understand the Energy Affordability Guarantee, the cap etc.

iii. Greater financial support by the general revenue fund is needed in an effort to help people achieve energy affordability for low-to-moderate income households.

The Governor’s inclusion of \$200 million towards expansion of EAP to electric customers who are below SMI but do not qualify for HEAP, is a great base to start from. As PULP raised above, we remain unsure whether the \$200 million is enough. With EAP under-enrollment a significant concern, PULP is advocating for \$1 billion in funds towards EAP to help close the projected \$1.75 Billion affordability gap. Moreover, after Phase 1 and Phase 2 of the electric/gas bill utility debt relief program, the State estimated that \$1,204,660,707 is projected to be leftover in unpaid arrears. PULP encourages the State to consider funding to help bring the debt accrued from May 2, 2022, onward down to zero.²⁰

C. Governor Hochul’s budget includes a proposal to enact what is effectively a carbon tax.

PULP sees the Governor’s “Cap and Invest” proposal as an important step towards implementing the Climate Action Council’s Scoping Plan. The “Cap and Invest” program would establish a gradually declining cap on greenhouse gas emissions and allow NYSERDA to sell allowances to entities that go over said cap. Some of the proceeds from the sale of the allowances (no less than 30%) would be issued to New York consumers as a rebate to limit the financial impacts of climate action. The rest of the proceeds would be strategically invested in programs that drive emissions reductions.

i. Under the Governor’s proposal, Cap and Invest would be created nearly entirely through regulation.

In the Governor’s Executive Budget, she proposes that the Department of Environmental Conservation (“DEC”) and the New York State Energy Research and Development Authority (“NYSERDA”) establish the program through regulation. Part AAA of Section 1(3) of the Transportation, Economic Development and Environmental Conservation (“TED”) budget bill states:

²⁰ See, Attachment E, Phase 2 Report;
<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={910DB98C-B749-43EF-A47D-84B7E1B58DC9}>

“An economy-wide cap and invest program, established through regulation by the department of environmental conservation and the New York state energy research and development authority, would meet the requirements of section 75-0109 of the environmental conservation law.”

PULP recognizes that it’s sometimes preferential to establish programs through regulation because it is generally quicker and more flexible. However, this program would touch nearly every facet of New York State’s economy from the energy, and transportation sectors, to the housing and waste processing markets and everything in-between. It’s crucial that such a major pillar of the Climate Act has the Legislature’s input, as opposed to the DEC and NYSERDA regulating something so impactful.

ii. Equity and affordability must be at the forefront of any discussion around implementation of the CLCPA, including Cap and Invest.

As PULP discussed in both our initial comments on the Climate Action Council’s Draft Scoping Plan and in our Senate Testimony on the Final Scoping Plan, equity and affordability must be at the forefront of any discussion around implementation of the Climate Act. Current and future programs meant to support the goals of the CLCPA must be designed in a manner that does not adversely impact low- and fixed-income households and disadvantaged communities.

The legislative declaration for Cap and Invest, Section 1(6), does direct the DEC, in consultation with NYSERDA, to prioritize affordability in the design of the program. Moreover, Section 1(9) states:

“The economy-wide cap and invest program...will be designed to invest in and, as appropriate, prioritize disadvantaged communities, including by ensuring investments of the proceeds of allowances benefit disadvantaged communities, as required by section 75-0117 of the environmental conservation law, and by designing other program elements to avoid disproportionate burdens on disadvantaged communities.”²¹

Although PULP is supportive of this language, we are concerned that these requirements are only directives to the agencies in charge of program design and implementation and not statutory mandates. Moreover, the language discussing how monies from the New York Consumer Climate Action Fund (“CCAF”) are disbursed is broad, stating that:

“Moneys of the account shall be expended for the purposes of providing a payment to help reduce potential increased costs of various goods and services that may result from the implementation of the cap and invest program to consumers in the state.”²²

We want to highlight that it doesn’t specify who exactly would be eligible for a climate action rebate, just “consumers in the state.” This ambiguity raises several questions, including:

- Who exactly will receive a climate action rebate?
- Is it just low-income customers and households that reside in DACs, or will all households in the state receive a rebate? Will the rebates be released in Tiers depending on household size, income, location in the state etc?
 - **Consideration:** Here we can look toward the legislative findings and declaration. Based on that, as well as what Governor Hochul has said publicly about this proposal, it seems that the rebate is intended to benefit disadvantaged communities.

²¹ See, FY2024 Executive Budget TED, A3008/S4008, at 314.

²² *Id.* at 319.

- **PULP’s recommendation No. 1:** Amend Section 8(3)(a) of the bill to clarify any ambiguity and specify that rebates from the CCAF sufficiently serve disadvantaged communities and low-income households.
- **PULP’s recommendation No. 2:** Moreover, it’s crucial that these benefits are delivered to customers in the most efficient means possible through a rebate, rather than requiring burdensome application, interview, or self-attestation processes as other energy-related financial assistance programs do. Adding language to support this goal would be a welcomed inclusion.

PULP also notes that although the bill proposes a statutory minimum that no-less than 30% of the proceeds be directed to the CCAF, it once again leaves nearly all discretion around program design up to the DEC and NYSERDA. Consequently, PULP wants to raise several questions that we have specifically related to the climate action rebate:

- How will rebates be allocated? In the event all consumers are eligible for a rebate, will the rebate amount be flat across all New Yorkers?
- If low-income households and DACs are prioritized, will they receive a larger rebate? Will it be a tiered system where lower-income customers receive a higher rebate, similar to how the Energy Affordability Program currently functions? If so, what metric(s) would be used to determine which tier a customer falls in?
- How will rebates reach customers? Is it automatic? Would it be in the form of an energy bill credit, similar to the Energy Affordability Program?

Rather than leave these important implementation questions entirely to the agencies, it’s important that the lawmakers have a say in this process. And it’s crucial that elements, including eligibility, are clarified as soon as possible.

iv. It’s crucial that the State’s agencies coordinate with one another to maximize benefits for low-income households and DACs.

In our comments of the CAC’s Draft Scoping Plan and Final Scoping Plan, PULP commented how imperative it is that the State’s agencies coordinate with one another to maximize benefits for low-income customers and DACs.²³ Consequently, PULP believes there should be an auto-referral process where if a customer receives a climate action rebate, they’re automatically referred to other NYSERDA programs including Empower, Solar4All, or other energy efficiency and/or weatherization offerings. Additionally, NYSERDA should be in communication with the Office of Temporary and Disability Assistance (“OTDA”) to check if these customers are eligible for other financial assistance programs like the Home Energy Assistance Program (“HEAP”) or Supplemental Nutrition Assistance Program (“SNAP”).

v. Under the current budget language, Cap and Invest must be effectuated under a strict timeline.

Finally, this is all suffice to say that the DEC must promulgate the regulations to effectuate Cap and Invest by January 1, 2024.²⁴ PULP flags that this will be a tight turnaround time for the

²³ PULP’s Testimony for the NYS Hearing on the approved Climate Action Scoping Plan, Jan. 19. 2023; <https://www.nysenate.gov/calendar/public-hearings/january-19-2023/joint-public-hearing-examine-legislative-and-budgetary>

²⁴ See, FY2024 Executive Budget TED, A3008/S4008, at 312.

agency and the public to work through the SAPA process. PULP will continue to make ourselves available to assist with the public comment process.

D. The Executive Budget includes a provision to allow the New York Power Authority (“NYPA”) to build more renewable generation sources.

PULP is appreciative that the Executive Budget includes language to allow NYPA to build renewables. Last year, PULP supported the Build Public Renewables Act (“BPRA”) (A279 – Carroll / S4134 – Parker), as we believe that it’s important for options to be explored that will assist our State with achieving our climate targets set by the CLCPA. Overall, PULP sees the proposed Article VII bill as a starting point for further discussion.

i. Long Island residents must be considered in the determination to allow NYPA to build more renewables.

PULP is very supportive of the explicit inclusion of the Long Island Power Authority (“LIPA”) in the Governor’s proposal. Long Island has a unique and difficult history that cannot be ignored, and LIPA, as an authority, requires specific attention and legal consideration. The BPRA mandates that at least 30% of the renewable energy that is generated to be directed to LIPA. In contrast, in the Governor’s language, there is no such minimum requirement. Instead, the Article VII bill is much broader, allowing NYPA to enter into contracts with LIPA, “to provide for bill credits to end-use electricity consumers in disadvantaged communities for renewable energy produced by renewable energy systems.”²⁵ PULP respectfully requests adding a more specific goal for assisting LIPA customers.

ii. Only low- to moderate-income consumers located in DACs are eligible for a bill credit under the Governor’s proposal.

An area that requires further review and discussion includes how the benefits are directed to DACs and low-income households more broadly. Under the Governor’s proposal, NYPA would be authorized to establish a program, the Renewable Energy Access and Community Help Program (“REACH”), that enables end-use electricity customers in DACs to receive bill credits from energy generated by renewable sources. The Article VII language defines “bill credit” as:

“...a monthly monetary credit as determined by the public service commission to the utility bill of an end-use electricity consumer located in a disadvantaged community, including a low and moderate income consumer, for renewable energy produced by renewable energy systems developed, constructed, owned, or contracted for by the power authority of the state of New York...”²⁶

PULP is generally supportive of this provision. Moreover, we appreciate the proposed language in Section 2 27-b(b) which states that “such bill credits shall be in addition to any other renewable energy program or any other program or benefit that end-use electricity customers in DACs receive”.²⁷ Earlier we commented on how there needed to be more coordination among the state's agencies so that bill credits, rebates, and benefit programs are maximized for low-

²⁵ See, FY2024 Executive Budget TED, A3008/S4008, at 297.

²⁶ *Ibid.* at 295.

²⁷ *Id.* at 299.

income households, especially those in DACs, and the addition of provisions like these are very supportive of that goal.

Still, PULP would like to raise one concern here as an advocate for *all* low-income New Yorkers. While we are supportive of language that prioritizes DAC consumers, especially low- and moderate-income ones, it must be noted that “low-income” and “DAC” are not interchangeable. There are many low-income households around the state that do not live in DACs. Consequently, legislation that prioritizes DACs does not necessarily prioritize low-income customers more broadly. Therefore, we respectfully request the Legislature to consider an amendment to expand the eligibility criteria of the credit under this article to all low-income households around the state.

iii. There are other elements related to this proposal that PULP is still reviewing but would like to draw the Legislatures’ attention to.

- The BPRAs has strong labor and procurement standards that the Governor’s proposal simply lacks, with one exception. Under the BPRAs, all NYPA projects are defined as “public works” and subject to Article 8 and 9 of the State Labor Law.²⁸ Projects have to utilize project labor agreements and also include “Buy America” provisions.²⁹
 - Both the BPRAs and the Governor’s proposal includes a provision which establishes a fund to help workers prepare for employment in the renewable field.³⁰ However, the BPRAs requires that NYPA work with more parties than just the Department of Labor and NYSERDA, including existing workforce development programs, unions and apprenticeship programs, and regional clean energy hubs.³² PULP is more generally supportive of the standards included in the BPRAs, but further consideration is necessary.
- The Governor’s proposal only “authorizes” NYPA to build public renewables whereas BPRAs “authorizes and directs” NYPA to do such. This distinction is especially important because of a provision in the BPRAs that requires NYPA to develop new projects in the event the State is unlikely or unable to meet the renewable energy goals of the CLCPA in the statutory timeframe.³³ There is no such provision in the Governor’s proposal to our knowledge but hold that the inclusion of such is very important to make sure we meet our clean energy goals.

D. Intervenor Funding for participation before the Public Service Commission is an important policy that should be re-considered in 2023.

PULP is supportive of finding a way to include Intervenor Funding in the FY2024 State Budget. While S.3034-A (Parker)/A.873-A (Cahill) was vetoed in 2022³⁴, PULP believes that the Governor’s veto message gives a great framework for further discussion on how to implement a workable program that will advance small intervenors in rate cases, policy proceedings, and

²⁸ See, A279 (Carroll)/S4134 (Parker), Subdivisions 36-43, at pp. 6-8.

²⁹ *Id.*

³⁰ See, FY2024 Executive Budget TED, A3008/S4008, Section 7 at pp. 303.

³¹ See, A279 (Carroll)/S4134 (Parker), Subdivision 37, at pp. 6.

³² *Id.*, see Subdivision 39, at 7.

³³ *Id.*, see Subdivision 33, at 3.

³⁴ See, Veto Memo 161 of 2022.

matters before the PSC. As a result, we encourage inclusion of intervenor funding in the FY2024 State Budget.

E. Conclusion

PULP appreciates the opportunity to provide written testimony at today’s Joint Budget Hearing on Energy Conservation. We thank Governor Hochul for raising energy affordability in the Executive Budget and encourage the Legislature to consider the recommendations and questions PULP has raised in our testimony. Thank you.

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