

RESOLUTION NO. #13 OF 2022

TITLE: RESOLUTION TO SUBMIT COMMENTS ON NEW YORK STATE CLIMATE COUNCIL'S DRAFT SCOPING PLAN FOR NEW YORK'S CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT (THE "CLIMATE ACT")

WHEREAS, in 2019, New York State Legislature enacted New York's Climate Leadership and Community Protection Act (the "Climate Act") that requires the total carbon emissions from New York State population be no more than 60% and 15%, respectively, of the 1990 carbon emissions (the average New Yorker's annual carbon footprint is reduced from 22.7 tons/year to 13.6 by 2030 ("2030 Mandate") and 3.0 tons per year by 2050 ("2050 Mandate").

WHEREAS, in the 2030 and 2050 Mandates, the Legislature created an energy rationing system that puts all New Yorkers (and their communities) in competition for the affordable energy needed for a sustainable community and/or "healthful environment" (the state cap is 61.47 million metric tons of carbon dioxide equivalent).

WHEREAS, in order to enforce the rationing system, the Climate Act Section 7 requires all state agencies to evaluate whether each and every decision (in particular infrastructure decisions) will be inconsistent with the 2030 and/or 2050 carbon footprint mandates and, if inconsistent (or will interfere with the attainment of the mandates), determine whether it is necessary and, if so, require alternatives or greenhouse gas mitigation measures. If not necessary, deny/terminate.

WHEREAS, the Climate Act Section 12 provides each aggrieved person standing to commence an Article 78 proceeding in the NYS Supreme Court to enforce compliance with the Climate Act including compliance with the mandates and Section 7.

WHEREAS, the Climate Act has granted to each and every state agency veto power over any and all projects requiring a state agency approval or decision and has granted the wealthy aggrieved person (who may be in competition for those carbon emissions) a tool to kill and/or delay a competitive and/or disliked project including even the renewal of an existing permit.

WHEREAS, the rationing of carbon emissions will exacerbate the upstate/downstate divide; the urban versus rural divide; the wealthy versus the working-class divide; the divide between municipal officials struggling to provide critical services and the environmental organizations. New York State Department of Environmental Conservation ("DEC") has recently used Section 7 authority to deny the repowering of two natural gas power plants in Orange County. DEC is under pressure to deny a permit renewal to a crypto currency facility because some feel the fossil fuel energy should not be rationed to that product. DEC is holding up numerous Title V air permits due to its inability to make a consistency determination under Section 7.

WHEREAS, in order to achieve the 2050 Mandate, the Climate Act mandates by 2040 that all the electricity generated by fossil fuels and the anticipated demand growth will have to be provided/replaced by wind (onshore and offshore), solar, hydro from Canada and other renewable sources (“2040 Mandates”). Due to lobbying efforts, biomass is no longer considered a renewable energy source in New York.

WHEREAS, the New York Independent System Operator (“NYISO”) – which manages New York’s energy grid – divides the state into two distinct areas – Upstate Energy (Zones A-E) and Downstate Energy (Zones F-K). The Upstate Energy zones currently use about 1/3 of the total electricity generated each year. According to NYISO 2021 Report of 2020 usage, the upstate sources of electricity are 90% zero carbon emission.

WHEREAS, with respect to the Downstate Energy zones, which represent two-thirds of the state electricity consumed, the story is quite different. According to NYISO 2020 Power Trend Report of 2019 usage and NYISO 2021 Power Trend Report of 2020 usage, the downstate sources of electricity were 69% fossil fuel in 2019 and 77% fossil fuel in 2020 (and are projected to be well over 90% fossil fuel in 2022).

WHEREAS, the NYISO 2020 Climate Change Impact and Resiliency Study, which analyzed the Climate Acts 2040 zero emission electricity target determined that the 2040 Zero-emission Grid Mandate is not feasible and would result in an unreliable (and thus unsafe) electric grid. In other words, the 2040 Mandate and 2050 Mandate are fantasies.

WHEREAS, in 2019, the GHG emission sources in New York State breakdown as follows:

Transportation (mostly travel over land)	28%
Buildings (mostly heating buildings)	32%
Electricity	13%
Industry	9%
Agricultural and Forestry (mostly livestock)	6%
Waste (mostly methane from landfills)	12%

WHEREAS, the Climate Act delegates to an appointed council of 22 individuals’ responsibility to develop a draft plan by December 31, 2021 to reduce the average New Yorker’s carbon footprint to near zero. The Draft Scoping Plan was issued in December, 2021 and this resolution and its attachments constitute the initial comments of the Delaware County Board of Supervisors.

WHEREAS, the Draft Scoping Plan mandates over a hundred (if not several hundred) different measures affecting all aspects of our daily lives and community activities. The following four prohibitions are responsible for the majority of the reductions:

1. Elimination of the use of fossil fuels for land travel
2. Elimination of the use of fossil fuels for all aspects of residential living including heating, cooking, outdoor equipment, hot water, and clothes dryer
3. Conversion of the electric grid to all renewable and zero emission sources
4. Transformation of the solid waste management system

WHEREAS, the prohibition on the use of gas, propane or home heating oil in our daily activities is scheduled to occur over the next 13 years (in 2024 for new homes; starting in 2030 for existing homes).

WHEREAS, the prohibition of the use of fossil fuels for land travel is more gradual and includes the following measures:

1. Provide direct rebates on zero emission vehicles supported by new fees on **purchase of fossil fuel vehicles**.
2. Adopt mechanisms to discourage vehicle use and generate funds for public projects, including congestion pricing, variable cost parking, **increased registration fees on carbon intensive vehicles, adoption of a per mile vehicle user fee system**, and increased municipal use of special assessment districts to fund public transportation investments.
3. Adopt California's Advanced Clean Car 2 Regulations, expected to require one hundred percent light-duty zero emission vehicle sales by 2035;
4. Adopt California Advanced Clean Truck Regulations requiring increase percentage of zero emissions Micro Hybrid Drives through 2035; and

WHEREAS, in 2018, DEC issued an order to close Indian Point Nuclear Power Plant due to the aquatic impacts from the withdrawal of non-contact cooling water from the Hudson River. In April, 2020, Indian Point was required to shut down Unit 2, and in April, 2021, Indian Point was required to shut down Unit 3. In 2019, when Indian Point was in full operation, it provided 25% of the downstate annual electric load (**16.7 million** megawatt-hours of zero-emission power).

WHEREAS, in an April 29 press statement marking the closure of Indian Point, NYSERDA CEO **Doreen Harris** implied that the zero-emission electricity lost from Indian Point would be addressed stating that "New York State's electric grid is undergoing a transformative evolution in pursuit of the nation-leading goals of the Climate Leadership and Community Protection Act" including "developing a tremendous renewable energy project pipeline." As a follow up to that press statement, in November 2021, NYSERDA submitted a petition to the PSC seeking approval and ratepayer funded subsidies for two massive transmission projects to bring non-fossil fuel electricity to NYC. The Petition states that "[t]he selected projects are expected to deliver **18 million** megawatt-hours of renewable energy per year to Zone J (i.e., New York City), more than a third of New York City's annual electric consumption, from a diverse generation portfolio including onshore wind, solar and hydroelectric power from Upstate New York and Québec. Total investment into both projects is

expected to amount to **nearly \$24 billion.**" Under NYSERDA's Petition, ratepayers throughout New York State (both upstate and downstate) are being required to fund two transmission projects.

WHEREAS, the Town of Middletown supports the Climate Council objective of promoting the transition to electric heating from fossil fuel heating. The Town of Middletown does not support (and vigorously object) to the mandate approach selected by the Climate Council to require all homes to install electric heating regardless of cost and feasibility. In lieu of a mandate, we suggest and encourage that the Climate Council develop a plan to make electric heat pumps the preferred and affordable technology when the homeowners need to replace their existing heating system. The correct approach is for the Climate Council to take an enabling approach – create the reality where the typical homeowner would select an electric heat pump system over a fossil fuel system to heat their home. In Delaware County the average low temperature during December, January, February, and March are 16°F, 9°F, 11°F, and 18°F, respectively—which is at or below the temperature that electric heat pumps provide reliable and efficient heat.

WHEREAS, the Town of Middletown does not support the mandate approach selected by the Climate Council to require all outdoor equipment to be all electric. Homeowners and users should have the choice whether to use gas fueled equipment and/or electric equipment – each has their own benefits and costs. Homeowners in New York State should have the same rights as homeowners in other states. Gas is mobile and is readily available; it allows a landscaper to move from site to site without stopping to recharge the battery; it allows the work to be performed where it is needed and in different weather. There is a role for both gas and electric power equipment and the decision should be left to the individual that is using the equipment – not to an elected official's political objective.

WHEREAS, the Town of Middletown does not support the mandate approach selected by the Climate Council to force the consumer to purchase an electric car. The Climate Council should focus on developing a plan/program that makes electric vehicles the preferred choice because they become affordable, available, and feasible. In Delaware County a car or truck is a necessity – not a luxury. As a necessity, it must be affordable, available, and feasible to the vehicle owner. Affordability will depend, in part, on whether electricity remains affordable. Availability and feasibility will depend on whether the necessary infrastructure is available and affordable to meet the needs of the vehicle owner. In our cold climate, parents need to know that they will get to their destination, that the car will work in the cold, that there is enough charge to get back home; and that the car can meet the family's hauling needs. There needs to be enough electricity in the local grid to handle the additional load; the charging station must be accessible, convenient, and not be inordinately time consuming.

WHEREAS, the Town of Middletown does not support imposition of a carbon tax, a mileage surcharge, increased registration fee for gasoline powered cars, or any additional tax on gas, propane, natural gas or home heating oil or a tax on solid waste. A carbon tax on the building heating sector and the transportation sector would simply make natural gas, gasoline, fuel oil and propane more expensive and thus make a vital necessity less affordable (transportation and heating) to residents. While the wealthy can afford an all-electric car and

home, and second home and third home, the working class (the median family income in Delaware County is \$49,544) will more likely rely on fossil fuel to heat their home or fuel their car. Delaware County residents are more likely to have to travel day-to-day long distances and heat a home in a cold climate. The utility bills and gas bills are already too high and not sustainable on the median family income. As the use of fossil fuels decreases, the cost of maintaining the fossil fuel infrastructure will be spread over a smaller base increasing the costs to the remaining users.

WHEREAS, the Town of Middletown finds that in adopting the Climate Act with its 2030, 2040 and 2050 Mandates, the Legislature made a grave mistake – the Legislature prioritized their goal of being recognized as a world leader in fighting Climate Change over the energy security of the state’s residents. Under the recently adopted Green Constitutional Amendment, every New Yorker has a constitutional right to “healthful environment”. Available and affordable energy is a critical component (comparable to air, water and food) to a healthful environment. Energy security is a constitutionally protected right. In the Climate Act, the Legislature effectively ordered the cessation of the use of fossil fuels; required all the state agency officials to enforce it the mandate in each and every decision; and empowered every aggrieved well-heeled donor/person the right to go to court to enforce it. The Climate Act mandates are the law and are enforceable in court regardless of whether the alternative energy sources are affordable, achievable, and available. The Climate Council selected its wish list of lofty directives without determining the cost and funding for those directives. The Town of Middletown agrees that reducing the use of fossil fuels for building heating, electric generation and land travel will reduce CO2 emissions and is an admirable goal. The Legislature can support that goal by enabling the availability, affordability, and the feasibility of the alternative energy sources so that the public/consumer selects those technologies over fossil fuel powered technology. The Legislature and the Climate Council should focus on enabling carbon reductions; not ordering those reductions against the will and at the expense of its citizens’ constitutional rights to choose the technology that protects their families.

NOW, THEREFORE, BE IT RESOLVED the Town of Middletown petitions DEC, DOH and DEP for the following relief:

1. Town of Middletown adopts this resolution and the attached white paper at its initial comments and directs the County Planning to submit these documents as comments on the Draft Scoping Plan.
2. Town of Middletown requests that County Planning, County DPW, and County Emergency Services review the draft scoping plan and provide comments as they deem appropriate.

RESOLVED, that this Resolution shall take effect immediately.

WHEREUPON, the Resolution was put to a vote and recorded as follows:

Motion made by: Robin Williams

Seconded by: Brian Sweeney

Councilman Christopher Dabritz was not in attendance.

Resolution adopted by a vote of 4 Ayes and 0 Nays

I hereby certified that the above resolution was duly adopted by the Town Board of the Town of Middletown at its regular meeting held on May 11th, 2022.

Dated: May 11th, 2022

Patricia F. Kelly
Patricia F. Kelly, Town Clerk
Town of Middletown



STATE OF NEW YORK }
COUNTY OF DELAWARE }
TOWN OF MIDDLETOWN }

I have compared the preceding copy with the original Resolution on file in this office adopted by the Town Board of Middletown at a regular meeting held May 11th, 2022, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT	MEMBERS ABSENT	VOTE
Supervisor Davis		<u>Yea</u> /Nay/Abstain
Councilperson Sweeney		<u>Yea</u> /Nay/Abstain
Councilperson Delameter		<u>Yea</u> /Nay/Abstain
Councilperson Williams		<u>Yea</u> /Nay/Abstain
Councilperson Dabritz	ABSENT	Yea/Nay/Abstain

Dated: May 11th, 2022

Patricia F. Kelly
Patricia F. Kelly, Town Clerk
Town of Middletown



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Carl Patrick Davis, Supervisor
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NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

RE: New York State Climate Action Council Draft Scoping Plan – Comments

To whom it may concern:

This letter is in response to the newly released “**New York State Climate Action Council Draft Scoping Plan**”, released in December 2021. After careful review of the plan we have concluded the goal of the plan to reduce greenhouse gas emissions is certainly commendable, but the process in which this plan proposes to meet the lofty goals outlined is unaffordable, unrealistic and places an insurmountable burden on smaller communities, particularly in the rural upstate regions. The concept of “mandating” change rather than incentivizing and enabling change is both antagonistic and short sighted. New York communities are afforded home rule through the New York State Constitution; these sweeping and swift mandates are a violation of the home rule powers to self-govern, removing any ability of local governments to make decisions impacting their local residents in a manner that best serves them as individual towns and villages.

As a community in the upstate rural areas it is apparent little to no thought was put into the implementation and consequences of the proposed mandates. The case studies cited in the plan are primarily focused on urban core “disadvantaged neighborhoods” without concern for the low to moderate income communities in the more rural areas of New York State. The concept of ride share and public transportation are not practicable in more rural communities. The cost of operation in relation to the ridership does not allow the system to work in a profitable manner. Factors to consider include commute distance; variable job shifts; distance between jobs, medical care, education and shopping; and multiple working members of each household.

The costs and safety associated with household heat conversions is also very different in upstate rural areas than in more urban areas of the state. Most housing stock in rural areas are older wood frame single-family homes that are heated with single source systems. Homeowners do not have the benefits of residual heating from the landscape and neighboring housing to offset heating demand, therefore, heating costs and needs are very independent per household. The average low temperature in Delaware County during December, January, February, and March are 16°F, 9°F, 11°F, and 18°F, respectively—which is below the temperature that heat pumps provide reliable and efficient heat. Many rural homes have unreliable electric services which poses a problem especially in the winter season due to the terrain, limited infrastructure and service providers. Electric service is often interrupted due to heavy snow, ice, wind and even cold, leaving homes without power for hours and even days. The cost burden to upstate homeowners to retrofit heating sources or pay an additional tax could deprive low to moderate income of affordable heating. The mandate would result in an increase in the use of wood and electric space heaters. -- The former posing a health impact and

the latter posing a fire safety issue. The critical point is that upstate homeowners/businesses who review their options for heating their home/business could, for a variety of reasons including safety, affordability, and reliability, make a rational decision to select an efficient fossil fuel system. Depriving our residents and businesses of that decision will only further drive residents and businesses out of our communities putting additional burden on our already struggling local economies.

Industrial, commercial and agricultural businesses require consistent and reliable sources for heat, operations and transportation. Without these basic services businesses cannot function profitably and will ultimately seek refuge in other states taking jobs and people with them. The current tax structure of New York State has already cost our communities hundreds of businesses and jobs, any additional job loss will only exacerbate an already strained economy.

As local leaders we acknowledge that climate change is here - the impacts of a rising temperature to the world are known and, for the most part, will continue to the end of this century. Riverine upstate communities have a heightened awareness of the impacts from flooding, heavy winter snow and ice storms and major wind events. It is more likely that heavy precipitation events will intensify and become more frequent. The impacts of these weather related events have a common thread in that they cause damage not only to private homes and businesses but also to the very fragile electric infrastructure in New York State. Loss of power from these events generally lasts days and even weeks, leaving home owners and businesses at the mercy of the elements. When these events happen during cold wet months a true threat to human life exists. Unlike more urban areas, shelter locations and warming facilities for displaced victims are limited, hot meals are at the mercy of volunteer organizations and repairs to the fragile infrastructure are often delayed due to the location of facilities in outlying, hard to reach areas in our mountainous terrain. A system solely reliant on electrification with no redundancy from other sources creates a threat to public health and welfare.

Efforts to address the impacts of climate change are better served by providing for research and funding to address the impacts of significant weather events. Communities must first be able to address community resiliency that will incorporate measures to reduce impacts from weather related events while reducing the carbon footprint over time. Once a community has the sense that they are secure, they can afford to invest in carbon reduction efforts that do not threaten their ability to support and sustain their homes, businesses and jobs. The ideal situation is a primary source of energy that will replace the use of fossil fuels on a daily basis with an emphasis on redundancy. A solid plan should allow for the use of fossil fuels to address lags in electric service, loss of power due to extreme weather and of course the ability to incentivize and enable homeowners and businesses to convert over time rather than make that decision for them.

Two years after adopting the Climate Act, New York voters approved an amendment to the State's Bill of Rights mandating that all New York State citizens have a basic human right to a "healthful environment." In New York State in 2022, a healthful environment includes access to water, sewer, broadband, cell service, medical service, affordable electricity/energy and emergency medical care. The State's Bill of Rights prioritizes a person's right to a "healthful environment". In the context of the Climate Act, a question now arises whether the Climate Act mandating a reduction in the average New Yorker's carbon footprint to near zero violates the constitutional right of many upstate communities and their residents to a "healthful environment." To answer that question, the Legislature (and the Executive Branch) must evaluate whether the 2040 Mandate and the 2050 Mandate are affordable, achievable, and sustainable. If not, then the mandates are unconstitutional.

The Draft Scoping Plan estimates the net present value of direct costs from the low carbon plan relative to the current energy system for the period 2020 through 2050 is \$500 billion. The Draft Scoping Plan estimates the **annual** net direct costs from the low carbon plan relative to the current energy system is approximately \$20 billion in 2030 and \$70 billion by 2050. The plan estimates these costs will be offset by

global benefits from reduced carbon emissions and public health improvements. However, the health benefits related to improved air quality and better health realized from walking or public transportation are only applicable in urban areas where air quality will be slightly improved (from clean to cleaner) and public transport and walkability to services is possible. Therefore, the cost burden and impacts are absorbed by rural communities while urban areas receive the lions' share of the benefits.

Ultimately, local municipalities want the state and developers to respect their home rule and they want the energy sector to pay its full property tax. Below are a few minimum changes that need to be made to the Climate Act and the Draft Scoping Plan to ensure an affordable and fair transition from reliance on fossil fuels.

1. The Legislature should leave the decision in the upstate area whether to change to all electric home or business to the homeowner and business owner.

The upstate rural counties support the Climate Council objective of promoting the transition to electric heating from fossil fuel heating. However, the upstate rural counties do not support (and vigorously object) to the mandate approach selected by the Climate Council requiring all homes to install electric heating regardless of cost and feasibility. In lieu of a mandate and/or penalties, we suggest and encourage that the Climate Council develop a plan to incentivize/enable the installation of heating systems, such as electric heat pumps, as the preferred and affordable technology when the homeowner needs to replace their existing heating system.

2. The Legislature should leave the decision whether to change all electric equipment to the user.

Similarly, users should have the choice as to whether they use gas fueled equipment and/or electric equipment based on affordability, reliability and need. There is a role for both gas and electric power equipment and the decision should be left to the individual that is using the equipment, and the circumstances of what the equipment is being used for.

3. With respect to Transportation, the Legislature (and/or the DEC) should focus on enabling the transition to electric vehicles rather than trying to force the transition.

The transition to electric vehicles is beyond the control of New York State. The proper role for the State is to develop a plan/program so that electric vehicles become the consumer's preferred technology. Whether it becomes the only technology will depend on the market, the manufacturers, and the national government. The challenge for the electric vehicle transition is similar to the challenge for electric heat pumps. In upstate rural areas, a car or truck is a necessity – not a luxury. As a necessity, it must be affordable, available, and feasible to the vehicle owner. There needs to be enough electricity in the local grid to handle the additional load; the charging station must be accessible, convenient and not be inordinately time consuming. We recommend that the Climate Council focus on developing a plan/program that makes electric vehicles the preferred choice because they become affordable, available, and feasible.

With respect to vehicles miles driven, we recommend that, at least with respect to rural communities, the Climate Council develop a plan to ensure robust cell coverage and broadband coverage in rural areas. The pandemic demonstrated that the key to reducing vehicle miles driven is to avoid the need to travel to remote meetings.

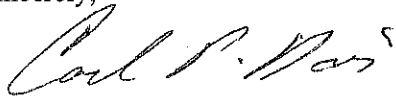
4. The Legislature should not impose a carbon tax, a mileage surcharge, increased registration fee for gasoline powered cars, or any additional tax on gas, propane, natural gas or home heating oil or a tax on solid waste.

In developing its recommendations, the Council considered that most rural communities have less access to technologies to reduce GHG emissions and are more reliant on higher carbon fossil fuels to meet energy needs. A carbon tax on the building heating sector and the transportation sector would simply make natural gas, gasoline, fuel oil and propane more expensive and thus make a vital necessity less affordable to our residents. Our residents need to travel day-to-day for work, school and services while also heating a home in a colder climate. The utility bills are already too high and not sustainable on the median family income for most upstate rural communities. Additionally, our communities are being forced to host the land intensive energy renewable projects and provide those projects a real property assessment that is only a fraction of their construction costs. Our communities are also being forced to share the capital transmission cost (\$24 billion) of bringing the upstate renewal energy to NYC to replace the zero-emission electricity lost due to the closing of Indian Point. Even though our communities and their residents are significantly poorer than the typical downstate resident, the 35% to 40% of the carbon tax funds will be directed to disadvantaged communities, which due to the formula/algorithm, are non-existent in rural communities.

The primary behavioral impact of the carbon tax on the building heating sector and the transportation sector in rural communities will, most likely be less heat and less vehicle miles (both of which are a basic necessity). As a result, the only justification for the carbon tax on the building heating sector and the transportation sector in rural communities is to raise revenues. If the Legislature needs to raise funds to implement the Climate Act, it should rely on income tax proceeds – not a tax on basic necessities for the working class and poor.

Thank you for your consideration of these comments. We welcome future dialog to help gain a better understanding of the plan and to address these very real issues.

Sincerely,



Carl P. Davis
Town Supervisor
Town of Middletown