May 9, 2019

Assemblyman Steven Englebright
New York State Assembly
Legislative Office Building 625
Albany, New York 12224

Senator Todd Kaminsky
New York State Senate
Legislative Office Building 307
Albany, New York 12247

Re: A.3876 – Climate and Community Protection Act – Proposed Amendments

Dear Assemblyman Englebright and Senator Kaminsky:

Thank you for your leadership on advancing legislation to curb the pollution that is causing climate change. The Climate and Community Protection Act (“CCPA”) is a landmark piece of legislation that would put New York on the path to a more sustainable future. This legislation would also encourage the construction of a significant number of new renewable energy projects across New York that would create thousands of jobs. Our organizations strongly support legislative action on climate change this session, and on transitioning to a clean and efficient electricity sector specifically. Our comments focus on the electricity portions of the bill.

The combined undersigned advocacy and trade associations represent firms that develop, build, own and operate clean energy projects across the state and employ many of the state’s 150,000 renewable energy and energy efficiency workers.1 We write to propose a few amendments to the current bill. These fall into four categories:

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1. Adding aggressive and specific goals and milestones for the electricity sector to drive utility compliance and allow visibility for investment;
2. Establishing a threshold for the prevailing wage requirements;
3. Not disrupting existing clean energy programs through abrupt funding changes; and
4. Using the existing definition of renewable energy.

First, our organizations strongly support the inclusion of specific goals and milestones for the electricity sector into statute, in order to make the New York Clean Energy Standard (“CES”) stronger and create a more certain investment climate for renewable energy developers and energy efficiency companies. We respectfully request that you consider including the following elements in your bill:

A. **Codify the Governor’s recommendation of 70% renewable electricity by 2030**, along with interim biennial or triennial obligations for electricity suppliers to achieve this requirement out through 2030, and specific procurement schedules for the New York State Energy Research and Development Authority, the New York Power Authority, and the Long Island Power Authority. These interim targets provide visibility for investment and planning, and yet still provide flexibility related to reaching the overall goal.

B. **Require utilities to sign Power Purchase Agreements (“PPAs”).** With a statutory PPA requirement, utilities would purchase a small percentage of the renewable electricity they supply through long-term contracts, that would include both the energy and the renewable attributes of clean electricity. This action would complement the NYSERDA procurement program and reduce ratepayer costs.

C. **Codify important electric sector goals in law.** Through Gubernatorial statements or Commission actions, New York has progressive and aggressive electricity goals. In his recent State of the State address, for example, the Governor committed to doubling land-based wind and solar in New York and announced new goals for offshore wind and distributed solar. These should be codified in law. We strongly urge you to establish in law the energy efficiency goals recently established by the Public Service Commission (PSC): a 185 TBtu fuel-neutral energy reduction from the current 2025 forecast\(^2\), with a sub-goal equal to an annual reduction of 3% in electricity sales by 2025, accounting for beneficial electrification. We also urge you to codify New York’s commitment to offshore wind, which is 9,000 MW by 2035, to allow New York to become an important player in this emerging industry. We also strongly urge you to establish in law the distributed solar goal of 6,000 MW, enough to power one million homes, as proposed by the Governor and endorsed by the Million Solar Strong Campaign. Inclusion of these specific goals will strengthen your bill and the State’s policies.

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\(^2\) The Commission established a statewide energy efficiency target of reducing usage by 185 TBtu compared to the 2025 forecast. This fuel-neutral target can be achieved by reductions in gas (or other heating fuel) or electric use, and therefore is not strictly an electric sector goal. The Commission simultaneously established a sub-goal for the electric sector of an annual reduction of electricity demand by 3%. Both goals can and should be codified in law as an efficiency floor with the Commission authorized to increase the goals.
Second, the current bill language requires all renewable energy projects that would be constructed to meet the established renewable electricity targets to pay prevailing wage for projects larger than two hundred and fifty kilowatts in size.

“Every contractor employed pursuant to this section, not otherwise required to pay laborers, workers or mechanics the prevailing rate of wages pursuant to article eight of the labor law, shall pay employees under contract for the development of renewable energy systems rated at two hundred fifty kilowatts or more, a wage of not less than the prevailing rate of wages for such work in the locality where such installation occurs. This requirement shall be in effect for the duration of the receipt by the contractor of the incentives established pursuant to this section and in no event shall such requirement extend beyond the availability of such incentives.” (A.3876)

As drafted, this proposal could threaten some clean energy jobs, most notably in the rooftop solar and community solar markets. This project size threshold is too low and would affect numerous small, local solar installers, and thereby make meeting the renewable energy targets much more difficult as the costs for projects will increase between 10 and 20 percent. It may also incentivize customers to unnecessarily pursue smaller projects. As written, this prevailing wage requirements will also confuse the market by establishing a threshold that is different from the dividing line between distributed and grid-scale solar.

Instead, our groups recommend raising this threshold to five megawatts and having it apply to the “construction” of renewable energy systems rather than the development. This alternative threshold is consistent with current NYSERDA and Department of Public Service (“DPS”) practice in the context of eligibility for compensation under the Value of Distributed Energy Resources program, the Community Solar program, and NY-Sun, and so would integrate better with the current solar rules and programs in New York.

We note that utility-scale renewable energy projects with contracts with NYSERDA or with NYPA are already required to pay prevailing wage and the member companies of our organizations will continue to meet that requirement. But unlike the NY-Sun program that provides fixed incentives to distributed solar projects, the utility-scale projects supported by Tier 1 of the Clean Energy Standard respond to annual competitive solicitations and bids submitted by developers. Under this approach, solar and wind firms are better able to build higher labor cost estimates into their annual bids. Many of our members companies work closely with labor organizations in the development of utility-scale renewable energy projects.

Third, the CCPA would currently require that 40 percent of:

“any funds collected pursuant to any market-based compliance regulations promulgated under this section as a result of legislative authorization, funds authorized by the public service commission to be collected solely for and directed to the New York state energy research and development authority and proceeds collected by the New York state energy research and development authority from the auction or sale of carbon dioxide emission allowances allocated by the department are invested in a manner which will benefit disadvantaged communities... (A3876).
We support the goal of equity in the distribution of clean energy funds. We agree with the premise that clean energy should be accessible to all and that lower-income communities have experienced disproportionate environmental burdens resulting from conventional fossil fuel generation over many years. Our concern is that the current bill language appears to undermine existing contracts and commitments from NYSERDA’s various incentive programs that support solar, energy efficiency and wind power. It most certainly would affect financial support for NY-Sun and the current suite of market transformation programs for energy efficiency, and it could potentially affect NYSERDA’s twenty-year contracts with renewable generators.

There is an opportunity to both ensure equity and not abruptly disrupt existing funding programs through alternative language, and we urge you to consider an alternative approach that would achieve both of these goals. As an alternative, the bill could dedicate to disadvantaged communities a percentage of currently uncommitted NYSERDA revenues; or a specific dollar amount of uncommitted funds; or revenues collected on a going-forward basis under new programs or policies; or some combination of these approaches.

Fourth, our organizations support the use of the current Clean Energy Standard definition of renewable which includes wind, solar, hydroelectric, fuel cells, tidal energy, and biomass subject to strict sustainability criteria established by the Commission. Given the ambitious goals in this proposal, we encourage the Legislature to use this established Clean Energy Standard definition of renewables rather than taking any clean technologies off the table.

We thank you for consideration of these proposed changes. We would be pleased to discuss these proposed amendments in further detail.

Respectfully submitted,

*signed/
Anne Reynolds, Alliance for Clean Energy New York

*signed/
Dr. Jack Brouwer, National Fuel Cell Research Center

*signed/
Joseph Martens, New York Offshore Wind Alliance

*signed/
Ryan Katofsky, Advanced Energy Economy

*signed/
Shyam Mehta, New York Solar Energy Industries Alliance

*signed/
Peter Rothstein, Northeast Clean Energy Council

*signed/
David Gahl, Solar Energy Industries Association

cc: Senator Kevin Parker
    Assemblyman Michael Cusick
    Secretary Dale Bryk
    Assistant Counsel Jen Maglienti