



**Comments on the Draft 2009 State Energy Plan
Submitted to the State Energy Planning Board
By Citizens Campaign for the Environment
October 19, 2009**

CCE is an 80,000 member, non-profit, non-partisan advocacy organization working to protect public health and the natural environment in NYS. CCE works to build widespread understanding and advocacy for policies and actions designed to manage and protect our natural resources and public health.

CCE works actively at the local, state, and federal level to advance policies that reduce greenhouse gas emissions and promote clean, renewable energy solutions. CCE applauds the Energy Planning Board for moving forward with the New York State Energy Plan process, releasing the draft Report, and welcoming public comments and feedback.

CCE supports New York State formulating an energy plan for the region. An agreed upon plan for energy development in the state will benefit the environment, public health and our climate by meeting our energy needs in the most efficient, sustainable, and cleanest manner, while providing regulatory certainty for energy companies in NYS.

CCE and our 80,000 members support an energy plan that stabilizes energy costs, creates new jobs, and increases our energy independence by investing in energy efficiency and renewable energy, not new coal or expensive nuclear energy. Several thousand members of the public signed petitions and more than 5,000 wrote individual comments in support of these principles during the comment period on the scope of the plan.

CCE is pleased that the *Draft 2009 State Energy Plan (hereafter the "Plan")* puts such a strong emphasis on energy efficiency and conservation, as well as renewable energy development. CCE supports the Governor's 45x15 goal that requires that 45% of New York's energy mix is obtained by renewable energy and energy efficiency by the year 2015, which is supported in the Plan.

CCE strongly urges the State Energy Planning Board to develop a strong plan for implementation in the final Plan, which is lacking in the draft Plan. A report with great information, recommendations and goals is important however, without a clear plan for implementation, it lacks effectiveness.

CCE specific recommendations

Climate Change

While the plan supports the Governor’s “80 by 50” plan, and indicates that there should be interim targets, the Plan should establish an implementation schedule.

Climate change is an immense environmental, economic, and societal crisis which humanity must address this century. This is why CCE strongly support and endorse the draft plans stated goal of reducing emissions 80% of 1990 levels by 2050.

New York State has historically been a leader in initiating and advancing climate change policy solutions. New York’s concentrated population in coastal areas are particularly vulnerable to the consequences of rising sea level. New York’s fertile farmland, critical maple tree industry, and destination fisheries are at risk from precipitation extremes and rising sea levels associated with climate change. New York State’s continued leadership on climate protection and adaptation is imperative to protect property, public health, and welfare of the people of New York.

Legislation currently under consideration by the New York State Legislature (A-7572 Sweeney/S-4315 Thompson: *NY Global Warming Pollution Control Act*) would require economy-wide greenhouse gas emission reductions of at least 80 percent below 1990 levels, with interim targets of 20 percent by 2020, 30 percent by 2025, 40 percent by 2030, and 80 percent 2050.

At the federal level, on May 21, 2009, the House Energy and Commerce Committee approved H.R. 2454, the *American Clean Energy and Security Act (ACES)* sponsored by Energy and Commerce Chairman Waxman and Representative Markey. While the initial greenhouse gas emission reduction targets in the legislation were initially higher, the legislation passed by the United States House of Representatives includes economy-wide greenhouse gas emission reductions of 17% compared to 2005 levels in 2020, 42% in 2030, and by 83% in 2050. Based on recommendations from the scientific community and the above legislative initiatives, we recommend that the Plan establish the following minimum targets and timelines for CO₂ emissions from its power sources:

- 20 percent below 2005 levels by 2020
- 30 percent below 2005 levels by 2025
- 40 percent below 2005 levels by 2030
- 60 percent below 2005 levels by 2040
- 80 percent below 2005 levels by 2050

NYS should establish additional interim annual targets and monitor implementation. To ensure that these interim targets are met, the Plan should recommend full funding for staffing of the Office of Climate change, and require annual reporting to ensure that

progress is measured. The Plan should outline a strategy and specific implementation steps that will allow it to achieve the above emission reduction targets. This should include emission reductions to be achieved through end user energy efficiency programs, customer sited renewable energy systems, utility-scale centrally sited renewable energy facilities, purchases of renewable power, upgrades of generation facilities to increase fuel efficiency, and other measures. The Plan should identify the agency, private sector, and non-profit entities to assist in implementation.

The Energy Plan should address climate change adaptation measures.

New York State should move as aggressively as possible to mitigate the impacts of climate change and policies should concurrently be developed to include adaptation. The IPCC concluded that climate change is already impacting physical and biological systems. New York must plan to adapt to the unavoidable impacts of climate change to protect people, habitats, plant and animal species, drinking water, and areas susceptible to flooding. *The Plan should specifically promote policies that provide financial resources (i.e. through auction of carbon credits) to establish necessary funds to invest in strategies to adapt to inevitable consequences of climate change.*

Energy Efficiency

The cleanest and greenest kW of energy is the kW that we never use. Energy efficiency and conservation are the first and most important strategies to reducing costs and saving ratepayers money; reducing pollution and benefiting the environment; and benefiting national security. Furthermore, investing in large-scale energy efficiency projects, including the *Green Jobs, Green Homes* program enacted by the State Legislature and signed by Governor Paterson have a tremendous potential to create new, local jobs. CCE strongly supports the Governor's 15x15 plan, which is supported in the Plan. While the goals of the "15 by 15" plan are laudable, there needs to be a clear and accountable plan for achieving the result. *CCE recommends that the Plan identify a course of action to help ensure that the PSC moves expeditiously to approve the "15 by 15" initiative, and identify funding to implement the initiative.*

Renewable Energy

Offshore Wind Development for New York State

New York has a tremendous offshore wind resource both in the Great Lakes and in the Atlantic Ocean. Recently, New York State has been proactively developing land-based wind energy. This includes the largest wind farm east of the Mississippi River, Maple Ridge Wind Farm in Lewis County, with an installed capacity of 231 MW, or enough to power 68,000 homes each year. Much of this clean, renewable wind energy is located in the upstate regions of New York. **Now is the time to aggressively move forward with siting offshore wind for Long Island.**

CCE is encouraged by the recent announcement for the Long Island Power Authority (LIPA) to team up with Con Ed, New York Power Authority (NYPA), and others in a public-private partnership to advance this energy agenda. A joint feasibility study

released by the two utilities concluded that an interconnection of up to 700 MW of wind power, located approximately 13 miles off the Rockaway Peninsula in the Atlantic Ocean, would be feasible with upgrades to their respective transmission systems. An aggressive process should be put forth to include LI stakeholders in this process and to seek the most efficient and effective location for this wind proposal.

Unfortunately, New York has fallen behind our neighboring states in siting projects to harness our offshore wind energy potential. We are hopeful that, under the Governor's leadership, NY can catch up to other states. University of Delaware researchers in 2007 showed there is enough wind between Cape Cod, Massachusetts, and Cape Hatteras, North Carolina, to supply—and exceed—existing power requirements in the nine coastal states between them.^[1] In addition, LIPA's own wind study shows that the south shore has highly productive wind conditions for wind power yet other states are steps ahead of us.

A model for large-scale wind farms can be found in neighboring states Delaware and New Jersey. Bluewater Wind has plans underway in both of these states to implement offshore wind development projects. In Delaware, Delmarva Power signed a power purchase agreement with Bluewater Wind for up to 200MW in June 2008, and the pact was ratified by the state in July 2008. Delaware's average offshore winds have the potential to produce 5,286 MW, which would power between 1.2 to 1.5 million average homes. Delaware's project is steadily advancing. The identified site is located 11.5 nautical miles off of the Delaware shore and is targeted to have a megawatt nameplate capacity of 450. The wind park is estimated to create enough power to sustain 110,000 homes in Delaware. The planning, verification, permitting processes is expected to take at least two years.

New Jersey is also well underway. Their planning began in the summer 2006, and the design was created in fall of that year. The proposal review occurred from December 2006 to spring 2007. The contract was awarded spring/summer 2007. New Jersey is actively pursuing the development of offshore wind energy through various state initiatives (e.g., grant solicitations, reimbursement programs, and renewable energy portfolio standards). In October 2008, the New Jersey Board of Public Utilities established a meteorological tower reimbursement program, which provides \$4 million per company to help expedite the development of offshore wind.

As you may be aware, on June 22, 2009 Secretary of the Interior Ken Salazar and New Jersey Gov. Jon S. Corzine, issued five exploratory leases for renewable wind energy production on the Outer Continental Shelf offshore New Jersey and Delaware. The data collected under these leases will be shared with Interior's Minerals Management Service and used to inform and support future commercial renewable energy projects, such as wind turbine farms, to help coastal States meet mandated renewable energy portfolio standards. ***CCE recommends that Plan support expedited progress, complete with a rigorous environmental review on siting offshore wind farms in the Great Lakes and off the South Shore of Long Island.***

Support Backyard and Community Wind initiatives

Small wind turbines require significant upfront investments and the combination of some utility companies new rebate program and recently extended federal tax credits will encourage electric customers to invest in “backyard” or ‘community’ wind power installations. The American Wind Energy Association states that, over its life, a small residential wind turbine can offset approximately 1.2 tons of air pollutants and 200 tons of greenhouse gas pollutants. CCE encourage New York State to advance a commitment to backyard wind through tax incentives or encouraging rebates from utilities. State incentives combined with federal tax credits that extend through 2016 –will fosters a small wind market throughout the state.

New York State should look closely at local permitting and planning barriers to small wind turbines particularly in coastal areas including Long Island, the Hudson River and the Great Lakes regions. For example, last year the Town of Islip became the first Long Island town to craft guidelines for the construction of wind turbines in residential neighborhoods. This is clearly a positive step; however the height restrictions in the guidelines may limit the cost effectiveness of a backyard turbine. *CCE recommends that in partnership with nonprofit and advocacy organizations, NYSERDA, LIPA and NYPA could help municipalities craft effective and consistent small wind permitting and planning regulations.*

Expand Solar use in NYS

Solar energy is another clean and critical renewable energy source that can and should be advanced. CCE is encouraged by Governor Paterson’s 100 MW solar program. 100 MW of solar energy is a laudable goal to begin this process, yet CCE believes New York should adopt aggressive policies to fully develop New York’s solar potential. In 2008, Germany installed 1,100 MW of solar energy and that country is projecting an additional installation of 1,300 MW in 2009.

According to one national solar company’s model, Long Island alone has the potential for developing 500-700MW of clean, renewable solar energy. The model demonstrates how a private company would build, construct, and maintain the solar panels. The company would own the solar units and through a power purchase agreement (PPA) sell the power to the grid, as does any existing power plant. New York has plentiful locations to place solar panels, including flat roofs, remediated brownfields, and closed landfill sites. *We believe this kind of model has the potential to advance solar energy in New York and should be aggressively explored and pursued by the state. CCE recommends that the NYS Energy Plan pledge to plan and produce 2000 MW from solar energy by 2020.*

Continue efforts to help streamline local renewable energy permitting

New York States needs an organized effort to analyze local permitting barriers to small-scale renewable energy. As described in the Network for New Energy Choices’ recent “Taking the Red Tape Out of Green Power” report, complex local permitting requirements and lengthy review processes delay installations and add significant costs to distributed renewable energy systems. Multiple permitting standards across jurisdictions create additional complications and inefficiencies for local installers. *CCE recommends*

that LIPA and NYPA could work across New York State to conduct a wide-reaching educational effort for municipalities, in partnership with nonprofit and advocacy groups, to illustrate the benefits of cutting the bureaucratic “red tape” that hinders businesses and residents that want to install renewable energy systems on their property.

Increased use of Biofuels

The plan calls for the increased use of biofuels to replace oil in heating use and gasoline; however, it does not offer specifics on how to accomplish this goal. Biofuels offers an additional puzzle piece in reducing climate change emissions and should be actively promoted. The current use of ragweed to replace soy biofuel has decreased the price and made it more competitive with current oil costs. *CCE offers the following recommendations:*

- All municipal government buildings, fueled by heating oil, should be encouraged or mandated to use a minimum of B5 biofuel blend. This will assist in encouraging market demand.
- Policies should be crafted to encourage companies who have the existing terminals to distribute pre-blended biofuel in 10,000 to 20,000 gallons quantities. On Long Island, that would be only two companies, Hart Fuel Oil and Sprague. It is very difficult for individual wholesale fuel companies to set aside a tank for biofuel only, so allowing pre-blended distribution will make the product more accessible to smaller fuel companies who may want to begin marketing it.
- **Promote the product.** The vast majority of New Yorkers have no idea this product neither is available nor are they acquainted with the benefits of using the product. In 2008, CCE participated in a community program launched by Nassau County Executive Tom Suozzi, called Green Levittown. The program entailed a massive public educational component on the environmental and economic benefits of “going green”. One part of the education was for CCE to educate Levittown residents on the availability and benefits of biofuels. Many homeowners switched to this fuel after the education process.

Fossil Fuels and Nuclear Power

Natural Gas

CCE agrees that there are significant challenges associated with the development of natural gas from the Marcellus and Utica Shale formations associated with the use of high volume hydraulic fracturing. CCE is concerned with the State’s mandate to develop this resource as the DEC has not adequately addressed environmental concerns ranging from water usage to disposal of fluids. The following are initial concerns of CCE, but are in no way a comprehensive critique of the DEC’s draft Supplemental Generic Environmental Impact Statement:

1. The cumulative impact of consumptive water loss on any of the basins
2. The cumulative impact to air quality
3. The cumulative impact of flowback water impoundments
4. Hazardous waste disposal

5. Spreading flowback fluid or production brine on roads
6. The protection of sensitive watersheds, including but not limited to, sole source aquifers and unfiltered drinking water supplies.

Developing natural gas through high volume hydraulic fracturing is new to New York, and developing these unconventional shale plays presents a host of challenges New York State must proactively address to ensure protection of New York's land, air, and water. The DEC must allow for greater public involvement, and disclosure. The laundry list of chemicals that must be treated and disposed of present local communities and publicly owned treatment facilities with tough economic dilemmas. Who will bear the cost of the infrastructure requirements? The economic benefits of developing natural gas have not been weighed against the near and long term economic burdens placed upon the people and local municipalities of New York.

The DEC draft Supplemental Generic Environmental Impact Statement cites the NYS Energy Plan's explanation of the economic benefits of developing more in-state natural gas resources, but does not adequately address the aforementioned costs. CCE encourages the State of New York and the DEC to take a holistic look at the costs that will be incurred—across agency lines—before rushing head long into approving the use of high volume hydraulic fracturing in New York.

The DEC has maintained its findings from the 1992 GEIS which state that because of the DEC permitting process there is no environmental impact to drilling on aquifers. High volume hydraulic fracturing in combination with multi-well pad sites, require a large amount of space for the pad, setbacks, and storage of wastes. Due to the potential for spills, disturbance of land, the concentration of chemicals that will be stored on site, as well as the transportation of drill cuttings, production brine, and flowback water, CCE disagrees that there will be no environmental impact, even in the context of the DEC's permitting program. The DEC must set aside this 1992 finding and acknowledge the fact that water must be protected, even at the expense of energy development. Sensitive watersheds, including but not limited to, sole source aquifers and unfiltered drinking water sources, must be protected for the long-term benefit and sustainability of New York's communities.

As referenced in the Draft Energy Plan, a key discrepancy for the development of unconventional shale plays is the need for simultaneous siting of pipelines. While the DEC acknowledges this issue and "recommends" that the PSC address it, there are no guarantees that gas will not be flared until the pipelines are in place. The issue of high volume hydraulic fracturing has flagged numerous discrepancies in the permitting and public review process including the PSC jurisdiction over pipelines and DEC jurisdiction over well pad siting, as well as, numerous DEC division jurisdictions over permits. While the DEC Division of Mineral Resources has the ability to severely limit and control public review and input on the siting of wells and multi-well pads. What is the public's review of the correlating permits and the PSC's review process? Is NYS prepared to cut the public out of the discussion simply to realize a short-lived economic benefit?

Lastly, the Plan recommends to “study potential for new private investment in extracting natural gas in the Marcellus Shale on state-owned lands where it would not be inconsistent with public trust or parkland doctrines.” The Plan should explicitly state that sensitive and unique areas, including State Parks, should not be drilled.

This is particularly timely, as a company that claims to own 3,000 acres of subsurface mineral rights in Allegany State Park, is proposing to drill five test wells in Allegany. Drilling in this sensitive ecosystem would be devastating to the health of the ecosystem. Trucks, spills, noise, road building and tree removal associated with drilling would adversely impact wildlife, water quality, and public enjoyment within the park.

New York State has banned commercial logging in State Parks with the “Policy on the Management of Trees and Other Vegetation in State Parks and Historic Sites,” enacted by Parks Commissioner Carol Ash on March 9, therefore, *CCE recommends that the Plan should state that drilling in State Parks should not occur.*

Impact of steam-electric power plants on aquatic resources.

The energy plan fails to adequately address the adverse environmental impacts on aquatic resources caused by cooling water intake structures at steam-electric power plants.

The draft Energy Plan includes an Issue Brief entitled *Environmental Impact and Regulation of Energy Systems* (hereinafter, “Issue Brief”), which “contains recommendations to ... minimize the environmental footprint of energy choices.” Issue Brief at 1. Unfortunately that Issue Brief, and the Energy Plan as a whole, fails to adequately assess the severe adverse environmental impacts on aquatic resources caused by cooling water intake structures at steam-electric power plants across the state. Section 316(b) of the federal Clean Water Act and title 6, section 704.5 of the New York Code of Rules and Regulations require power plants to use the best technology available (BTA) to minimize the adverse environmental impacts of cooling water intake structures. Further, improvements to power plant cooling systems are often necessary to meet New York State water quality standards. But rather than proposing strategies to move past the antiquated, highly destructive, and wholly unnecessary method of cooling power plants known as “once-through cooling,” and embrace modern cooling technology that will protect aquatic resources and meet legal requirements, New York’s 2009 draft Energy Plan seeks to perpetuate the unacceptable status quo and thereby allow billions of fish and other biota to be needlessly killed by power plants that withdraw extraordinarily high volumes of water for cooling.

As the Issue Brief correctly recognizes, “[i]n New York, thermal power projects are among the State’s largest water users.” Indeed, there are many power plants on the State’s marine coastline and on the Great Lakes which each withdraws hundreds of millions of gallons of water per day for their once-through cooling systems. The large volume and high velocity of those plants’ cooling water withdrawals needlessly destroy billions of fish and other aquatic organisms each year by trapping them on intake screens (this is known as “impingement”) or by sucking them into the plants’ heat exchangers

(this is known as “entrainment”).¹ The Issue Brief briefly acknowledges these and related harms:

Entrainment usually results in 100 percent mortality to eggs and larvae; entrained juvenile and small fish are also damaged and killed in large numbers. The discharge of heated cooling water back to the water body can also have adverse impacts on aquatic life. This thermal pollution can kill fish directly, affect fish behavior, and facilitate the growth of nuisance species.

The Issue Brief also recognizes that available technology exists to minimize those impacts:

- Environmental impacts to aquatic life can be significantly reduced or eliminated through the use of closed-cycle evaporative or dry cooling systems, in which recycling greatly reduces water use.

But despite being well aware of the severe adverse environmental impacts of power plant intake structures, and of the existence of technology to minimize those impacts, the Energy Plan does not embrace the conversion of power plants to this new technology. Rather, and quite astonishingly, it touts the state’s efforts to do just the opposite – *i.e.*, to “permit[] once-through cooling to continue.” However, the alternative technologies and operational measures that New York State DEC has proposed to reduce fish mortality, if they work at all,² are far less effective and reliable than closed-cycle cooling. For example, as CCE has explained in recent comment letters to DEC, allowing the Glenwood Generating Station in Nassau County to continue to operate its once-through cooling system with the technologies DEC is proposing would kill more than ten times as many fish (92 million per year) than would a closed-cycle cooling system (less than 9 million per year). Similarly, allowing the Port Jefferson Power Station in Suffolk County to continue to operate its once-through cooling system with the technologies DEC is proposing would kill almost eight times as many fish (385 million per year) than would a closed-cycle cooling system (50 million per year). Furthermore, the total efficiency loss and parasitic energy load attributable to closed-cycle cooling is a very modest 1 to 2

¹ As the U.S. EPA has explained, small, fragile aquatic organisms entrained through a plant’s cooling system are subject to mechanical, thermal, and toxic stress including physical impacts in the pumps and condenser tubing, pressure changes caused by diversion of the cooling water into the plant or by the hydraulic effects of the condensers, thermal shock in the condenser and discharge tunnel, and chemical toxemia induced by antifouling agents such as chlorine. 65 Fed. Reg. 49,059, 49,072 (Aug. 10, 2000).

² While the Issue Brief claims that a fine mesh filter barrier known as the Gunderboom Marine Life Exclusion System “was *successful* in significantly reducing impingement and entrainment” by filter the volume of cooling water drawn into the former Mirant Lovett Generating Station in the Hudson River in Stony Point, New York, “while allowing the facility to operate its once-through cooling system,” *see* Issue Brief at 9, n.17 (emphasis added), the Gunderboom experiment actually proved to an unmitigated disaster at that plant as well as at the Bethlehem Energy Center near Albany.

percent, a reduction in generation that is consistent with those caused by other well accepted and widely embraced regulatory controls, and which can be offset with conservation and renewables.³

Instead of allowing its power plants' once-through cooling systems to continue killing enormous numbers of fish, New York State should adopt a statewide policy to phase out that technology. As an example of another state which is doing just that, consider the draft "Statewide Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling," published in June 2009 for comment by the California State Water Resources Control Board, which is attached hereto as Exhibit A ("California BTA Policy"). The policy establishes two BTA compliance tracks for all coastal and estuarine power plants in the state: Track 1 requires a reduction in intake flows commensurate with closed-cycle cooling (*i.e.*, a minimum 93 percent reduction) and an intake velocity of 0.5 feet per second. Track 2 (which is only available where compliance with Track 1 has been demonstrated to be infeasible) requires a comparable level of reduction of impingement and entrainment for all life stages of marine organisms. Meeting either Tracks would reduce fish kills by approximately 90 percent. Of particular note, the policy includes an "Implementation Schedule," which sets forth specific deadlines by which each of California's 19 coastal plants must be in full compliance with the applicable compliance track.

While the California BTA Policy is far from perfect, and environmental groups have recently submitted comments aimed at improving it, the policy provides an example of how a state can adopt a comprehensive, forward-looking approach to the use of coastal waters for power plant cooling and thereby phase out once-through cooling over time. That is a far more progressive and environmentally sound policy than that offered in the Issue Brief or anywhere else in the New York State Energy Plan.⁴

³ For example, the measured annual efficiency penalty at the 346 MW Jeffries Station in South Carolina – which converted its cooling system to a full recirculating, mechanical-draft system after many years of operation utilizing a once-through system – is 0.16%. The cooling tower pump and fan energy demand for steam plants is estimated by EPA at 0.73%. Thus, the total energy penalty (the sum of those two numbers) would be approximately 0.9%. *See, e.g.*, U.S. EPA, Office of Water, Technical Development Document for the Proposed Section 316(b) Phase II Existing Facilities Rule, April 2002, Chapter 5, Sections 5.6.1 to 5.6.3, pp. 5-34 to 5-36. In fact, there is a similar loss in efficiency when power plants stacks are fitted with wet scrubbers and other equipment to reduce NO_x and SO₂.

⁴ It should also be noted that the Issue Brief is incorrect in its statement that the U.S. Supreme Court recently "concluded that the Clean Water Act permits ... EPA to perform a *strict* cost benefit analysis in determining BTA." Issue Brief at 21-22 (emphasis added). In fact, in the case at issue, *Entergy Corp. v. Riverkeeper, Inc.*, 129 S. Ct. 1498 (2009), the Supreme Court did not even consider whether a strict cost-benefit analysis would be permissible; rather the Court held only that consideration of costs in relation to benefits is not statutorily prohibited, while expressly recognizing that "a rigorous form of cost-benefit analysis" might be "precluded." *Id.* at 1508. This is a significant difference because, as Justice Breyer explained in his separate opinion in *Entergy*, "formal cost-benefit proceedings" are typically "lengthy" (thereby significantly delaying technology upgrades) and invariably result in "futile attempts at comprehensive

Coal and CCS

Coal fired power plants and contribute to:

- **Global climate change.** Power plants emit greenhouse gases responsible for global warming, which are expected to cause rising sea levels, decreased lake levels in the Great Lakes, more severe storms and drought, and more.
- **Acid rain.** Power plants emit NO_x and SO₂, the chief pollutants responsible for acid rain. Acid rain has contributed to causing more than 500 lakes in the Adirondacks to be left lifeless.
- **Mercury pollution.** Mercury pollution emitted from power plants contaminates fish and wildlife. The NYS Department of Health issues numerous fish advisories due to high levels of mercury in fish, attributed in large part to fossil fuel electric generating facilities.
- **Particulate matter.** Soot from power plants cause 1,200 premature deaths in New York State annually.

New York State can meet its energy needs with cleaner, more sustainable energy sources, and **CCE recommends that the Plan state that no new coal plants should be built in NYS.**

NYS should not use unproven Carbon Capture and Storage (CCS) as justification to build coal fired power plants. There is no guarantee that CCS technology will work or be economic, let alone would actually be installed on “CCS-ready” coal plants at a later date to achieve the 90% capture and burial rate referenced in the draft plan. **The Plan should remove support for the Jamestown Coal Plant.** The proposed plant is unnecessary, expensive, and if built, would degrade the health of our environment.

Nuclear Power

It is no secret that nuclear power generation comes with huge human and environmental risks. The legacy of toxic waste that persists alone threatens to contaminate our drinking water, land, and future generations. New York, especially upstate, is no stranger to the legacies of toxic contamination. Today, Western New York residents are struggling to secure a full clean up of West Valley, a nuclear reprocessing site, contaminated half a century ago. Radioactive waste is migrating towards tributaries of our Great Lakes. **CCE urges the final State Energy plan to invest in clean and sustainable energy to help address critical environmental and public health issues while avoiding creating more expensive and dangerous toxic waste.**

CCE urges New York to adopt an energy plan that makes wiser investments to generate electricity without the risk and without the legacy of waste. **Due to the absence of a**

monetization” (*i.e.*, trying to put a precise dollar value on ecological integrity). *Id.* at 1515. Such cost-benefit analysis thus frustrates effective power plant permitting and should be avoided.

permanent nuclear waste solution, national security, and unsustainable nature of extracting, processing, and procuring fuel for nuclear power plants, CCE urges that New York adopts a State Energy Plan that avoids building new nuclear power plants.

Local enthusiasm exists for any economic activity in upstate New York. We appreciate the hard work by union staff that operate and maintain the nuclear power plants. However, CCE believes that there is a better way to put our community back to work. As Governor Paterson has stated himself, the job creation potential in the clean energy sector from state and federal investments is projected to yield almost 50,000 jobs in New York. *The final State Energy plan should advance our community, state, and nation's sustainable economic future by systematically investing in clean and locally generated renewable energy while planning and preparing for divesting large centralized polluting electricity generation, in accordance with an Energy Plan.*

Energy Plant Siting

The New York State plan recognizes that improving the power plant siting process will facilitate the deployment of renewable and other necessary resources. The plan also acknowledges that the current process for siting, construction, and operation of wind and electric generating facilities is a patchwork of local and state regulations combined with the SEQRA process. The Plan calls for an insurance of a timely and efficient review process for siting needed electric generation facilities that incorporates specific provisions to the comprehensive generation siting law, which includes: a one-stop siting process that combines state and local authorization into a single approval; a time-certain framework for rendering a decision on an application; authorization to override the application of unreasonably restrictive local laws; opportunities for extensive public input and the availability of intervenor funding for expert witnesses and consultants. With New York's potential for wind energy, CCE is encouraged that the plan calls for a more efficient process for siting wind, which will undoubtedly reduce the need for power plants that negatively affect the public health and New York's environment.

The plan recommends an amendment to PSL Article VII to require a fee for the siting of transmission lines and pipelines to provide for intervenor funding. This can be used to defray intervenor expenses associated with hiring expert witnesses and consultants. The plan acknowledges that this will provide more meaningful participation by intervenors. However, CCE believes that including this type of funding sources in the reenactment of PSL Article X will be the most productive way to ensure an informed decision in the siting process.

The plan recognizes that since the expiration of Article X, the SEQRA energy infrastructure approval proceeding does not adequately provide for community participation and more community input in the siting process is important. It recommends that mechanisms to enhance early, fair, and meaningful public involvement with transparency are implemented. It also recommends that siting and permitting criteria that assess disproportionate health risks and environmental impacts on potential environmental justice areas are developed to avoid or mitigate potential impacts. CCE

believes that the adoption of a reformed Article X energy siting law will accomplish these goals.

While CCE is encouraged that the New York State Energy Plan includes important recommendations to improve the siting process that will allow for a more efficient wind siting procedure and improve community involvement, we are disappointed the plan does not call for the reenactment of Article X.

CCE believes that the Senate and Assembly should adopt a reformed Article X energy siting law that includes enhanced protections for the public health and the environment.

Specific Recommendations:

1. Ensure environmental justice and mitigation of pollution impacts on overburdened communities. Large electric nonrenewable generating facilities generate pollution that adversely impacts surrounding communities. The final Article X energy siting law must include a review of potential impacts to overburdened low-income communities and communities of color, in context with existing local pollution sources, when proposing to add another major source of pollution to the community. Additionally, pollution mitigation, based on cumulative impacts, must be required for already overburdened communities. The pre-application report should be expressly required to include a discussion of the extent to which production of fuel for the facility meets any state, federal, or United Nations standards or guidelines concerning disproportionate impacts to low income or minority population.

2. Guarantee the tools and a transparent process for meaning public participation in the siting process. Communities must be properly equipped with the resources needed to provide legal services to navigate the complicated siting process. The final Article X energy siting law must provide adequate funding to community groups and municipalities to provide important legal services. CCE strongly supports project developers providing intervenor funds, available during the pre-application process, and urges the final law to include increased funding levels.

3. Conservation easement lands should be ineligible for industrial development.

A critical land protection tool in New York State, conservation easements provide valuable ecosystem services that must be valued, including drinking water quality protection and stormwater buffering. The final Article X energy siting law should ensure conservation easement lands are ineligible for siting electric generating facilities and repeal ECL sections 49-0307(2)(d) and 49-0307(3)(e), which currently allows conservation easements to be modified or extinguished to site major steam electric generating facilities.

4. Adopt acceptable and eligible technologies.

Emission free renewable energy can help meet New York's energy needs with no harmful emissions. Repowering outdated power plants can provide significant energy efficiency and emission reduction benefits almost immediately. Waste-to-energy facilities, nuclear power plants, and all new power plants that produce more carbon dioxide per kilowatt-hour than is produced by a combined cycle natural gas fired power must be excluded.

A responsible siting process should examine the impacts of each new source of pollution while considering existing pollution loads. The process should decrease negative environmental and health impacts from the industry as a whole. ***CCE supports the adoption of an Article X energy siting law that protects vulnerable communities, ensures resources for meaningful public participation, prohibits industrial development on conservation easement lands, and advances cleaner, more efficient energy generation.***

NYPA Reform

The Plan recommends that there be an evaluation of NYPA's current hydropower allocations, to provide maximum benefit to the state. ***CCE agrees, and recommends the Plan should state that energy efficiency and conservation, as well as manufacturing of renewable energy technologies, should be included as criteria for allocation of low cost power.***

Job creation, industry sector, and geographic constraints are the most important criteria for power allocation in the current power programs. Energy efficiency and conservation, as well as the development of additional renewable energy sources, are not valued in the current scheme. **Citizens Campaign for the Environment recommends that the criteria for NYPA's allocation of low-cost power include:**

- **Energy efficiency and conservation.** Businesses and other entities that apply for low-cost power should be required to outline and implement a meaningful energy efficiency and conservation plan in order to be considered for low cost hydropower. Many of the current recipients of low-cost power are some of the most energy intensive in the state, making these companies the highest priority for implementing efficiency and conservation measures. The use of hydropower for these companies provides no incentive for energy efficiency and conservation efforts. Legislation introduced in both the Assembly and Senate (A. 8825-A – Cahill / S. 5979 –Parker), which passed the Assembly in 2009, would require recipients of NYPA low cost power to undergo a NYPA-funded comprehensive energy audit. While this legislation is a step in the right direction, ***CCE recommends that the Plan should advise the legislature to enact legislation that would also require low cost power recipients to pursue all cost effective energy efficiency measures identified in the audit, with financing assistance provided by NYPA.***

- **Companies that develop renewable energy technologies.** Manufacturers of renewable energy technologies, such as wind, geothermal and solar power, should be a high priority sector to receive low-cost power.

Enhanced and Efficient Public Transportation Services

The Plan correctly identifies public transportation as a major component to reducing VMTs. However, the critical and essential mass transit system in New York State, the MTA is woefully mismanaged and is on financial life support. It may not be politically palatable for the plan to identify the MTA as failing, but that does not negate the truth – the LIRR and the MTA are failing in their critical role to supply the suburbs of NYC with a desirable and affordable mass transit system *CCE recommends the MTA makes two critical changes – critical management and oversight, and lower prices.*

The plan calls for motivating commuters from the NYC suburbs to get out of our cars and into mass transit. This is ideal. However, when the only mass transit option is very expensive then it simply is not effective. Want to get commuters get out of our cars? Lower the price of the train tickets. In 2008, when gas sky rocketed over \$4.00 per gallon, train ridership hit an all time high. When the cost of gas slide back down, commuters returned to their cars, reducing mass transit ridership. **Increasing ticket costs ALWAYS decreases train ridership.** The MTA should decrease ticket costs, thereby increasing ridership and generating the necessary revenue to support the mass transit system.

Conclusion

CCE appreciates the Governor and State Energy Planning Board for facilitating a robust process with meaningful opportunities for participation and recognizes that the execution and implementation of the final plan is essential to realize New York’s sustainable energy, economic, and environmental future. CCE urges the board adopt a clean, sustainable, renewable, efficient, and wise state energy plan.

CCE also believes that effective implementation of the state energy plan will require reliable, dedicated funding sources. CCE strongly opposes recent efforts to raid the “dedicated” funding in Regional Greenhouse Gas Emission (RGGI) program to offset budget shortfalls in the state. It is unconscionable and short sighted for the state to remove funding from this critical program, which is essential to New York’s sustainable energy future.

Thank you for your consideration of our comments.

Sincerely,

Adrienne Esposito
Executive Director

cc: Governor David Paterson
Speaker Sheldon Silver
Senator Antoine Thompson
Assemblyman Robert Sweeney
Senator Darrel Aubertine
Assemblyman Kevin Cahill
NYPA CEO Richard Kessel
LIPA President/CEO Kevin Law
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