

RGGI

AT A CROSSROADS



**ENVIRONMENTAL
ADVOCATES OF NEW YORK**
YOUR GOVERNMENT WATCHDOG

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MISSION:

Environmental Advocates of New York's mission is to protect our air, land, water, and wildlife and the health of all New Yorkers. Based in Albany, we monitor state government, evaluate proposed laws, and champion policies and practices that will ensure the responsible stewardship of our shared environment. We work to support and strengthen the efforts of New York's environmental community and to make our state a national leader.

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OVERVIEW

For the past seven years, the Cuomo Administration has used funding made available to New York through the Regional Greenhouse Gas Initiative (RGGI) for some authentic climate mitigation purposes as well as some highly questionable ones. While programs like Green Jobs - Green New York, 76West, and the Drive Clean Rebate owe their success to RGGI funding; the Governor has also diverted RGGI funds to subsidize power rates for Long Islanders and plug budget holes. These diversions are bad policy precedents that squander the opportunity to better the environment. An upcoming revision to state regulations offers the Governor an opportunity to take his hand out of the cookie jar and invest RGGI proceeds in a way that will propel New York to the forefront of climate justice.

Background

RGGI has reached an important transition point. Now approaching its tenth year, the participating states will adopt changes that will guide RGGI through the next decade.

Under RGGI, carbon pollution from power plants in the nine participating states – Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont – is capped. For each ton emitted, power plants must purchase an “allowance.” The supply of those allowances is capped, and allowances are sold at quarterly auctions. The proceeds from those auctions are then distributed to the RGGI states with an understanding that a portion of those funds will be invested in energy efficiency, renewables, and other carbon abatement programs. This investment, in turn, creates green jobs and protects the environment across the state.

Over the life of the program, RGGI has raised more than \$1 billion for New York.

Successful Choices

In 2013, Environmental Advocates of New York released a report entitled “RGGI: A National Model for Fighting Climate Change¹” to coincide with the last program update. That report examined the spending of RGGI proceeds through 2012, highlighting key investments and community benefits throughout New York. The data revealed that all 62 of New York’s counties had benefitted in some way from RGGI investments in energy efficiency programs, clean renewable energy projects, green workforce development, and community outreach and education efforts.

In examining the time since 2013, we found that several RGGI funded initiatives continued to offer New Yorkers opportunities to take advantage of programs that help reduce climate pollution and energy waste while delivering cost savings and economic benefits to communities throughout the state.

Despite continued progress, our analysis has uncovered a number of areas where RGGI funding decisions have deviated from the original intent of the program. RGGI’s purpose has always been to supplement and not supplant the state’s existing clean energy initiatives.

GREEN JOBS | GREEN NEW YORK



Green Jobs – Green New York, one of New York’s signature RGGI programs, has now helped more than 19,800 households invest in energy-saving home improvements. The New York State Energy Research and Development Authority (NYSERDA) has also successfully leveraged federal funds to issue bonds to help make the program self-sustaining. Since 2013 NYSERDA has partnered with community-based organizations across the state on outreach and education initiatives to help New Yorkers connect with the program.

76WEST

76West is a clean energy innovation program designed to lure businesses and jobs to the Southern Tier. Launched in 2016, this competition invites companies to submit clean energy concepts that, with capital, technical, and business development support, will stimulate job growth in New York and help the state meet its climate pollution reduction goals. To date, twelve companies have received 76West awards.

1 - “RGGI: A National Model for Fighting Climate Change”: <http://eany.org/our-work/reports/rggi-national-model-september-2013>



NYSERDA launched the Drive Clean Rebate program during the first quarter of 2017. The \$55 million initiative is jointly funded with RGGI and Clean Energy Fund resources. The program offers point-of-sale rebates of up to \$2,000 for the purchase or lease of new qualified plug-in electric vehicles. There are over 40 rebate eligible vehicles. The program has already provided New Yorkers with over \$7.5 million worth of rebates for more than 5,750 vehicles.

NYSERDA's RGGI Operating Plan details program spending and makes clear that use of the auction proceeds are meant to supplement and not supplant the state's existing clean energy funding commitments. The following excerpt is taken from the 2017 RGGI Operating Plan:

"Historically, the investment of RGGI auction proceeds has been designed to complement existing programs, including the System Benefits Charge (SBC), Renewable Portfolio Standard (RPS), Weatherization Assistance Program, Energy Efficiency Portfolio Standard (EEPS), and various transportation programs funded by the federal Congestion Mitigation and Air Quality Improvement Program. The statewide goals of reduced GHG emissions, reduced energy use, accelerated growth in the State's clean energy economy, increased energy efficiency, increased fuel diversity (measured by the overall proportion of renewable electricity generation), reduced criteria pollution and low-income home weatherization are therefore enhanced by these complementary resources."

Prior to 2014, NYSERDA would convene a formal advisory group to consult with on how to best utilize RGGI funds. The group included a broad array of environmental and energy stakeholders, including representatives from the state Legislature. NYSERDA disbanded the formal advisory group in 2014, opting instead for annual presentations of the RGGI operating plan followed by short public comment periods.

During a period spanning 2015 and 2016, NYSERDA went nearly 20 months without holding a stakeholder briefing. It was during this time that the Authority made one of the largest allocations to a single project, outside of those appropriated in the state budget or standalone legislation, in the history of New York's RGGI operating plan absent the benefit of stakeholder input.

Behind the Curtain

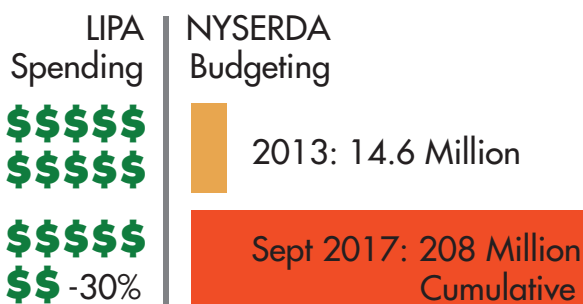
Despite continued progress, our analysis has uncovered a number of areas where RGGI funding decisions have deviated from the original intent of the program. RGGI's purpose has always been to supplement and not supplant the state's existing clean energy initiatives. However, instead of supporting innovative carbon abatement strategies through stakeholder informed operating plans, the Cuomo Administration has been rerouting funds to the Governor's pet projects.

Subsidizing LIPA



In 2013, NYSERDA began dedicating RGGI funds to the Long Island Power Authority's (LIPA) Efficiency Long Island and Renewable Energy Portfolios. These initiatives offer Long Island households and businesses access to energy saving efficiency programs and incentives for the purchase and lease of renewable energy systems.

What began as a \$14.6 million commitment has escalated into one of the largest components of the RGGI spending



plan.² As of September 2017, NYSERDA has, on a cumulative basis, budgeted over \$208 million in RGGI funds for the Long Island programs.³ Over a similar time period, LIPA cut its own program spending by 30-percent from 2013 levels. Because RGGI funding now pays such a large portion of LIPA's efficiency programs cost (costs that are generally borne by ratepayers), the Governor is effectively subsidizing LIPA rates.

Plugging Budget Holes

RGGI revenues have also been redirected for uses outside of the RGGI operating plan through the state budget process. Since 2015, the state budget process has stripped \$170 million in RGGI dollars from NYSERDA. The lion's share of those funds have been directed to supplant costs associated with energy tax credits and the Electric Generation Facility Cessation Mitigation Program.

2 - 2013 RGGI Operating Plan: <https://www.nyserdera.ny.gov/-/media/Files/EE/RGGI/2013-RGGI-operating-plan.pdf>

3 - 2017 RGGI Operating Plan: <https://www.nyserdera.ny.gov/-/media/Files/EE/RGGI/2017-RGGI-Operating-Plan.pdf>

To date, \$92 million in RGGI funds have been transferred to support energy tax credits that in some instances had been supported by state operating funds since the mid-nineties. The practice of supplanting state funding with RGGI dollars has raised questions around equitable access to auction proceeds since low-income households have limited ability to take advantage of tax credits.

The Electric Generation Facility Cessation Mitigation Program is a \$69 million fund administered by Empire State Development to provide property tax relief for local governments and school districts facing a loss of revenue attributed to the closure, temporary or otherwise, of a power plant. The fund was seeded with \$45 million in RGGI dollars. The program does not require a power plant to permanently retire for a municipality or school district to access funding. This allows power plant owners to “mothball” a facility and reduce property tax payments, while preserving the option to return to service whenever market conditions are more favorable. This maneuver sees the state subsidize the power producer’s property tax obligations absent any guarantee of long term carbon pollution reductions.

Moving Ahead

Over the last two years, RGGI states have conducted a review to determine: what has been working well in the program; what areas needed improvements; and how to extend the program from 2020 to 2030. In January of 2017, midway through the review process, Governor Andrew Cuomo used his State of the State platform to call on the states to adopt a plan that would result in a reduction of the greenhouse gas emission cap by at least 30-percent of 2020 levels by the year 2030. In August, the RGGI states announced they had reached an agreement that would meet that goal.⁴

Now, it is up to the states to adopt the agreed upon changes so that they can take effect by the time the existing rules expire in 2020. In New York, that means the Department of Environmental Conservation (DEC) and NYSEERDA must review their regulations to determine what changes they will need to make to stay in alignment with partner states.

This will mark the third time New York will have used its regulatory authority to establish and update its RGGI program rules. In 2008, both DEC and NYSEERDA adopted regulations governing power plant compliance, program enforcement, the conduction of allowance auctions, and the allocation of auction proceeds.⁵ In 2013, after the conclusion of a program review process by the RGGI states, DEC again updated its regulations. NYSEERDA opted not to amend its regulations.

Recommendations

New York should use the upcoming regulatory review process as an opportunity to reexamine their nearly decade-old regulations. The following recommendations to the state were developed through a collaborative process involving the New York City Environmental Justice Alliance, UPROSE, PUSH Buffalo, New York Lawyers for the Public Interest, New York Working Families, and Environmental Advocates of New York:

- Invest RGGI proceeds in ways that prioritizes frontline, environmental justice, and disadvantaged communities, with at least 40-percent of the operating budget dedicated to projects that directly benefit the identified communities;
- Develop programs and grant opportunities that adequately support community energy planning and community leadership in the transitions to renewable and resilient energy systems, as well as energy efficiency;
- Dedicate a portion of RGGI funds to pilot a Pay-As-You-Save (PAYS) energy efficiency financing model designed to reach communities that have limited access to the Green Jobs – Green New York program;
- Develop community-driven Just Transition plans to identify the needs – and the resources necessary to address those needs – of whole communities impacted by the shift away from a fossil-fuel based economy;
- Establish a regulatory definition and subsequent identification of disadvantaged communities that bear burdens of negative public health effects, environmental pollution, and impacts of climate change, and possess certain socioeconomic criteria;
- Adopt regulatory measures to maximize reductions of both greenhouse gases and co-pollutants in disadvantaged communities;
- Require electric generating facilities, currently operating with multiple units that are individually under the 25MW threshold, to comply with RGGI;

(continued on next page)

4 - News Release: RGGI States Announce Proposed Program Changes: Additional 30% Emissions Cap Decline by 2030, August 23, 2017 - https://www.rggi.org/sites/default/files/Uploads/Press-Releases/2017_08_23_Announcement_Proposed_Program_Changes.pdf

5 - 6 NYCRR – Parts 200 and 242 and 21 NYCRR Part 507

Recommendations *(continued)*

- Assess how RGGI is impacting environmental justice communities across the state, including an equity analysis of the distribution of RGGI funds and other climate investments regarding the specific needs of frontline, environmental justice, and disadvantaged communities; and
- Formalize the process for the development of the auction proceeds Operating Plan to facilitate a stakeholder engagement process.

REGIONAL GREENHOUSE GAS INITIATIVE (RGGI) FUNDING ALLOCATIONS

Green Jobs – Green New York (GJGNY)

The Green Jobs Green New York (GJGNY) Program has long been one of the primary RGGI-funded initiatives in New York. The Green Job Green New York Act of 2009 established the program and dedicated RGGI dollars to seed an energy efficiency revolving loan fund, workforce development programs, and specialized outreach and education programs run by community-based organizations.

New York's building stock is dated and inefficient. Residential and commercial structures account for just over 26-percent of the state's total greenhouse gas emissions⁶, second only to the transportation sector. The Legislature passed the GJGNY Act to provide New York consumers with opportunities to reduce their energy bills while also cutting back on wasted heating, cooling, and electricity that is driving climate pollution. The GJGNY Program offers innovative financing options for customers to undertake energy-saving improvement projects. After undergoing a free or reduced cost energy audit to identify a menu of proven cost-effective energy conservation measures, households and small businesses have the option of applying for a direct loan through NYSEERDA or entering into an agreement to pay for efficiency improvements through their utility bills, a practice commonly known as "on-bill recovery." Loan repayments are based on estimated monthly energy savings. This approach eliminates a significant market barrier by providing the upfront capital for common sense efficiency projects without increasing monthly expenses.

Since the program was launched, households all across the state have taken advantage of the GJGNY residential energy efficiency revolving loan fund to invest in energy saving improvements to their homes. Through the end of the first quarter of 2017,

more than 19,800 households have accessed GJGNY financing totaling \$238.7 million.

NYSEERDA has used the success on the revolving loan fund to create an innovative partnership with the New York State Environmental Facilities Corporation (EFC)

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that is helping to sustain the program. Periodically, since 2013, NYSEERDA has been issuing revenue bonds backed by the repayments of existing GJGNY loans in order to replenish the revolving loan fund. To ensure the success of these unique revenue bond offerings, EFC has been serving as a guarantor resulting in the bonds receiving AAA/Aaa credit ratings from Moody's and Standard and Poor's. By drawing a nexus between energy efficiency and a reduction of fossil fuel related air pollutants contaminating New York's waterways, EFC was able to guarantee the bonds through the Clean Water State Revolving Fund, an EPA-backed federal – state partnership that provides local governments access to financing for quality projects. The NYSEERDA and EFC partnership is the first in the nation to utilize a State Revolving Fund to back energy efficiency revenue bonds, yielding over \$90 million across three issuances.⁷

A significant aspect of the GJGNY Act was its direction to NYSEERDA to coordinate with community-based organizations on education and outreach efforts to help connect New Yorkers to the program. From 2013 to 2017, NYSEERDA has committed over \$6.7 million in funding to eleven community-based organizations

6 - NYS Energy Planning Board: *The Energy to Lead – Biennial Report to the 2015 State Energy Plan*, December 18, 2017

7 - *Green Jobs – Green New York 2017 Annual Report* - <https://www.nyserda.ny.gov/-/media/Files/EDPPP/GJGNY/Annual-Report-GJGNY/2017-GJGNY-Annual-Report.pdf>

located throughout the state. The following organizations served as GJGNY grantees during this period:

- Adirondack North Country Association
- El Puente
- Neighborhood Housing Services of Jamaica
- Public Policy and Education Fund
- Affordable Housing Partnership
- Rural Ulster Preservation Company
- Sustainable South Bronx
- Neighborhood Housing Services of Staten Island
- People United for Sustainable Housing in Buffalo
- Pathstone Corporation
- Long Island Progressive Coalition

These organizations offer a variety of services aimed at enhancing community participation in the GJGNY Program. They offer specialized counseling to help guide homeowners through the application process. Some organizations work with local energy efficiency contractors to establish community benefits, like local hiring and prevailing wage agreements, in the neighborhoods being served by GJGNY loans.

The community based organizations also play a key workforce development role by working with individuals seeking career opportunities in the clean energy sector. By coordinating with local job training programs, the organizations are able to provide people access to education and apprenticeship opportunities. Many organizations offer an array of ancillary support services for continuing education or assistance for low-income families.

NYSERDA is now taking the lessons learned from the GJGNY Program, especially the aspects benefitting low-to-moderate income communities, and incorporating them into its broader Clean Energy Fund. Going forward, the Clean Energy Fund will support work with community based organizations and workforce development programs.

While GJGNY has been successful for moderate-income households, it has failed to reach a significant segment of New Yorkers, including renters, low-income customers and consumers with poor credit. NYSERDA would be well served to consider recommendations put forth by the New York City Environmental Justice Alliance to dedicate a portion RGGI funds to pilot a

Pay-As-You-Save (PAYS) model, a form of inclusive financing involving third party capital and utilities designed to reach communities that have limited access to the existing GJGNY Program.⁸

76West

76West is a clean energy innovation program designed to attract businesses and jobs to the Southern Tier. Governor Cuomo unveiled the initiative in his 2015 State of the State address, with the following description:

*"To spur new investments in green jobs in the Southern Tier we want to hold a \$20 million dollar clean energy competition. Let's invite companies, internationally, to bring their best ideas to the Southern Tier. We will take the best ideas in clean energy companies, we will invest in them if they site and grow in the Southern Tier. We did this in Buffalo. It worked significantly well. Now let's do it for the Southern Tier."*⁹

The 76West Energy Competition invites companies to submit clean energy concepts that, with capital, technical, and business development support, will stimulate job growth in New York and help the state meet its climate pollution reduction goals. The program is designed to solicit four rounds of proposals where



companies compete for awards ranging from \$1 million for first place, \$500,000 for second place, and four \$250,000 awards. In order to receive the award, the winners must commit to locate

in the Southern Tier or establish a direct relationship with entities in the Southern Tier that will result in job growth in the region. Two rounds of competitions have already been held and the winners of the third round are expected to be announced in August of 2018.

Throughout the competition, 76West provides mentors and other resources to help the companies develop business plans and foster relationships with experts,

While GJGNY has been successful for moderate-income households, it has failed to reach a significant segment of New Yorkers, including renters, low-income customers and consumers with poor credit.

8 - Comments from the New York City Environmental Justice Alliance to NYSERDA Regarding the RGGI Operating Plan, January 5, 2018 - <https://www.nyserdera.ny.gov/-/media/Files/EE/RGGI/New-York-City-Environmental-Justice.pdf>

9 - Transcript of Governor Andrew M. Cuomo's 2015 State of the State message - <http://www.saratogian.com/article/ST/20150121/NEWS/150129902>

academic institutions and investors throughout the region and state. These services are meant to help companies improve their proposals as they move through each stage of the competitions. For the winners, these services continue to be offered post competition. In October, Governor Cuomo announced NYSERDA will open a clean energy incubator in Binghamton to provide technical support and space for 76West winners and other similarly situated clean technology companies.

The winner of the inaugural 76West competition was a company from Horseheads, NY named Micatu.



The company makes optical sensors that give more accurate readings of electricity current and voltage when compared to the

electronic technology utilities have traditionally relied on. Micatu's sensors allow utilities to properly manage the electrical grid, reducing wasted energy and pollution. Since winning the 2016 competition, Micatu has received additional state support from Empire State Development to expand its manufacturing capabilities.¹⁰

Dallas-based Skyven Technologies was the grand prize winner of the second round of the competition in 2017. The company has developed what it calls its Intelligent Mirror Array technology to source heat directly from the sun at levels high enough to support industrial manufacturing applications. Skyven believes the technology has the potential to bypass the need for future natural gas infrastructure buildout to support new manufacturing facilities.¹¹



Ten additional companies also received awards in the first two rounds of the competition. These companies produce products and offer services in the areas of solar, clean energy

financing, energy storage, building envelopes, wastewater treatment, and data center efficiencies.

EV Rebates / Charge NY

The transportation sector is the largest source of climate pollution in New York, representing 34-percent of

the state's greenhouse gas portfolio. Emissions from gasoline and diesel powered vehicles in New York are equal to the total carbon dioxide output from all sources in the state of Maryland. To move people and goods, New Yorkers spend more than \$20 billion a year on gasoline and diesel fuel that has to be imported to the state.

There are over 11 million cars and light-duty trucks registered in New York State, roughly 30,000 of which are electric vehicles. In 2014 Governor Cuomo, as part of a multi-state agreement¹², committed New York to a goal of 850,000 zero-emission vehicles by 2025. The RGGI backed Charge NY and electric vehicle rebate¹³ program is one of the state's initiatives driving New York toward meeting its commitments.

In 2016, the Legislature took an important step to jumpstart the state's efforts to increase the number of zero-emission vehicles sold in New York by advancing electric vehicle rebate legislation during State Budget negotiations. Ultimately the Legislature and the Governor struck a budget deal creating the rebate program and an electric vehicle initiative for municipal fleets that is funded through the Environmental Protection Fund.

NYSERDA launched the Drive Clean Rebate program during the first quarter of 2017. The \$55 million initiative is jointly funded with RGGI and Clean Energy Fund resources. The program offers point-of-sale rebates of up to \$2,000 for the purchase or lease of new qualified plug-in electric vehicles. The amount of the rebate is determined by the all-electric range of the battery and the manufacturer's suggested retail price (MSRP). When combined with federal tax credits, certain vehicles with an all-electric range of more than 120 miles can qualify for benefits up to \$9,500. There are over 40 rebate-eligible vehicles. The program has already provided New Yorkers

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10 - Star Gazette: State grant will help Big Flats sensor maker grow, December 29, 2016 - <http://www.stargazette.com/story/news/local/2016/12/29/state-grant-help-big-flats-sensor-maker-grow/95470948/>

11 - News Release: Skyven Technologies awarded \$1 million grand prize in New York's 76West competition, August 16, 2017 - <http://www.skyven.co/news/?offset=1513183615762>

12 - News Release: Governor Cuomo Announces Multi-State Plan to Increase the Number of Zero-Emission Vehicles in the U.S., May 29, 2014 - <https://www.governor.ny.gov/news/governor-cuomo-announces-multi-state-plan-increase-number-zero-emission-vehicles-us>

13 - NYSEDA Drive Clean Rebate Program - <https://www.nyserda.ny.gov/Drive-Clean-Rebate>



with over \$7.5 million worth of rebates for more than 5,750 vehicles.¹⁴

Vehicle charging infrastructure is also key to the growth of electric vehicle purchases in New York. Increased visibility and access to charging points is part of the state's strategy to reduce "electric vehicle range anxiety" by providing New Yorkers with the confidence that they will be able to recharge their batteries while they are away from home. In Governor Cuomo's 2013 State of the State address, he set a goal for 3,000 public and workplace charging stations throughout New York by 2018. New York ended 2017 with roughly 1,800 charging stations. The Governor used the 2018 State of the State to up the ante, challenging the state to meet a new goal of 10,000 charging stations by 2021.

The Charge NY program is tasked with developing strategies to help the state meet its charging facility goals. NYSEERDA is working with public and private stakeholders to enhance the market for charging infrastructure investments. The program is also exploring opportunities to drive down the costs of charging stations through aggregate purchasing and financial support for the installation of stations at locations that demonstrate high usage rates like multi-family buildings, public parking facilities and workplaces.

Brookhaven National Lab Ion Collider

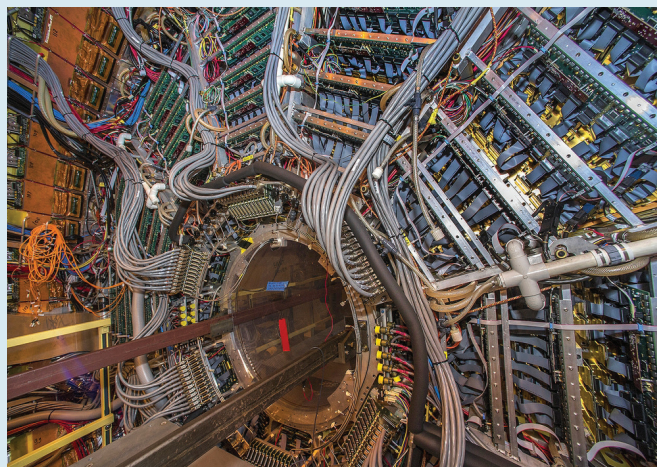
In 2016, NYSEERDA awarded \$25 million to the Brookhaven National Laboratory (BNL) to partner

with Cornell physicists on the design and construction of a new type of particle accelerator that, if successful, will have significant implications for scientific research across a broad array of fields. The Cornell BNL Energy Recovery Linac Test Accelerator (CBETA) is being commissioned at Cornell's Wilson Lab, where BNL can take advantage of the University's existing world class accelerator components and the team of scientists at Cornell's Laboratory for Accelerator-based Sciences and Education (CLASSE). The CBETA is intended to serve as a prototype for a 2.4 mile-long electron-ion collider proposed for the BNL campus on Long Island.

Stakeholder engagement is critical for enhancing the effectiveness, quality, legitimacy, and accountability of NYSEERDA's decision making.

According to NYSEERDA, the prototype aims to recover energy that is otherwise wasted during particle collision tests at existing accelerators. The recycled energy will allow for the creation of much more powerful beams greatly enhancing the quality and quantity of data collected during experiments. The energy savings for the proposed BNL collider versus a conventional facility are

estimated at approximately 140,000 megawatt-hours (MWh) per year and a savings of 1.4 million tons of CO₂ over the life of the project.



Notwithstanding the merits of the BNL and Cornell collaborative, the manner in which the RGGI funds were awarded underscores the need for reforms to the RGGI budgeting process. Stakeholder engagement is critical

for enhancing the effectiveness, quality, legitimacy, and accountability of NYSERDA's decision making. The \$25 million allocated to the CBETA represents one of the largest allocations to a single project in the history of New York's RGGI operating plan. NYSERDA entered into the contract with BNL on August 11, 2016,¹⁵ however stakeholders were not made aware of the award until December 8, 2016.¹⁶ If NYSERDA were committed to transparency, they would have included stakeholder input well prior to the approval of this project.

Supplement Not Supplant

RGGI proceeds have always been intended to supplement New York's array of clean energy programs in order to enhance them and expand their reach to a broader set of customers.¹⁷ In recent years, there have been a number of instances where the proceeds have been used to supplant rather than build upon existing funding mechanisms.

Long Island Power Authority Renewable Energy and Energy Efficiency Programs

In 2013, NYSERDA began dedicating RGGI funds to the Long Island Power Authority's (LIPA) Efficiency Long Island and Renewable Energy Portfolios. These initiatives offer Long Island households and businesses access to energy saving efficiency programs and incentives for the purchase and leasing of renewable energy systems. What began as a \$14.6 million commitment in the 2013-14 RGGI Operating Plan has escalated into one of the largest components of the spending plan.¹⁸ As of September 2017, NYSERDA has, on a cumulative basis, budgeted over \$208 million in RGGI funds for the Long Island programs.¹⁹

Over a similar timeframe, while NYSERDA was funneling RGGI dollars to Long Island, LIPA was cutting its energy efficiency and renewable energy budgets. LIPA budgeted \$115.8 million for its Renewable Portfolio Standard and Efficiency Long Island programs in 2013. The following year the

Authority cut the budgets for those programs by \$24 million; and by 2016, program funding had plummeted to \$81.4 million, a 30-percent cut from 2013 levels.²⁰

The sequestering of RGGI funds to pay for LIPA's renewable energy and efficiency programs has raised the question of whether RGGI funds are distributed equitably. Similar programs, established by the New York State Public Service Commission (PSC), are offered to customers outside of the LIPA service territory. Those programs have traditionally been funded through charges on utility ratepayer bills, like the System Benefit Charge (SBC).

Since LIPA is not regulated by the PSC, its customers are not required to pay the same charges. Unlike the SBC, the costs associated with RGGI are applied to all of New York's grid-connected energy consumers. In 2015, a group of clean energy advocates, including Environmental Advocates of New York and the state's largest investor-owned utilities, raised the issue of equity in joint comments to NYSERDA:

While some of the Joint Stakeholders supported the use of RGGI funds as a short-term measure to continue solar incentives on Long Island, we are concerned about the RGGI Operating Plan's ongoing carve outs for Long Island efficiency and solar programs. Continued funding of these efforts on Long Island through RGGI resources is not fair to other customers in the state who are compelled to pay both renewable energy and energy efficiency surcharges as well as RGGI carbon allowance charges. Consistent with the REV effort, the Long Island Power Authority ("LIPA") should require the system operator to encourage energy efficiency and renewable energy deployment and establish funding mechanisms to advance these objectives. All customers who contribute to the RGGI funds via their energy purchases (essentially this is all customers in the State) should have an equal opportunity to participate in RGGI programs.²¹

RGGI funding for LIPA's renewable energy and efficiency is projected to continue through 2020.²²

15 - NYSERDA Periodic Procurement Contracts Report – August 15, 2016 - <https://www.nyserda.ny.gov/-/media/Files/Publications/Annual-Reports-and-Financial-Statements/2016-Periodic-Procurement-Contracts-Report-August.pdf>

16 - 2016 RGGI Operating Plan Amendment - <https://www.nyserda.ny.gov/-/media/Files/EE/RGGI/2018-RGGI-Op-Plan-Amendment.pdf>

17 - 2009 RGGI Operating Plan - <https://www.nyserda.ny.gov/-/media/Files/EE/RGGI/2009-RGGI-Operating-Plan.pdf>

18 - 2013 RGGI Operating Plan - <https://www.nyserda.ny.gov/-/media/Files/EE/RGGI/2013-RGGI-operating-plan.pdf>

19 - 2018 RGGI Operating Plan Amendment - <https://www.nyserda.ny.gov/-/media/Files/EE/RGGI/2018-RGGI-Op-Plan-Amendment.pdf>

20 - Energy Efficiency and Renewable Energy Portfolios Annual Evaluation Reports 2013-2016 prepared for LIPA and PSEG Long Island by Opinion Dynamics Corporation - <http://www.lipower.org/papers/reports.html>

21 - Comments of the Joint Stakeholders on New York's Regional Greenhouse Gas Initiative Operating Plan Amendment for 2015, May 2, 2015 - <https://www.nyserda.ny.gov/-/media/Files/EE/RGGI/Amendment-Comments/2015/Joint-Stakeholders.pdf>

22 - RGGI Operating Plan Amendment for 2018 - <https://www.nyserda.ny.gov/-/media/Files/EE/RGGI/2018-RGGI-Op-Plan-Amendment.pdf>

State Budget Transfers

Recently, RGGI revenues have been redirected for uses outside of the RGGI operating plan through the state budget process. In 2015, Governor Cuomo kick-started the trend by proposing a transfer of \$38 million in RGGI funds to supplant costs associated with energy tax credits and the Environmental Protection Fund (EPF) in his 2015-16 Executive Budget proposal. The adopted budget included a RGGI transfer totaling \$41 million. Subsequent budgets have redirected additional RGGI funds for energy tax credits, workforce development programs at the State University of New York (SUNY), and property tax relief for municipalities and school districts impacted by reductions in tax payments by electric generating facilities.

Since 2015, the state budget process has been used to redirect \$170 million in RGGI dollars from NYSERDA. The lion's share of those funds has been directed to supplant costs associated with energy tax credits and the Electric Generation Facility Cessation Mitigation Program.

Energy Tax Credits

The 2015-16 State Budget included a \$23 million transfer of RGGI funds to the state's general fund. The 2016-17 and 2017-18 State Budgets included similar provisions. The Cuomo Administration has claimed these transfers are necessary to cover costs associated with energy tax credits. Of the tax credits cited, the solar energy personal income tax credit represents the largest cost to the state, which, according to the Department of Tax and Finance, totaled \$23 million in 2014.²³

The solar energy tax personal income tax credit was first signed into law by Governor Pataki in 1997²⁴, prior to the existence of RGGI. Like most tax expenditures, the solar tax credit has never had a dedicated funding source. Since 2015, \$92 million in RGGI funds have been transferred to support energy tax credits that in some instances had been supported by state operating funds since the mid-nineties.

In 2017, in an effort to prevent the Governor's proposal to supplant state funding for tax credits with RGGI dollars, 69 organizations from across New York and beyond sent a letter to the Governor and legislative leaders urging support for an Assembly-led initiative

to utilize the \$23 million in RGGI funds to support community solar in low-income and environmental justice communities. The letter highlighted inequities in access to tax credits and the need to invest in communities most impacted by fossil fuel pollution by making the following argument:

*"Tax credits offer little to no direct benefit to the lower income and environmental justice communities that are disproportionately burdened by the impacts of climate change and fossil fuel derived pollution. RGGI funded grants to cover expenses that are not paid for by programs offered or planning to be offered by NYSERDA through the Clean Energy Fund, NY Sun or other sources would provide communities on the front lines of climate change with new, and needed, opportunities to tap into the economic and health benefits clean, renewable energy systems provide."*²⁵

As noted in the groups' letter, low income households have limited ability to take advantage of tax credits, which raises wealth and geographic equity issues when it comes to the distribution RGGI funds when they are used to pay for tax credits. According to NYSERDA, during the period beginning in January 2015 and running through the end of September 2017, there were 47,971 residential solar energy systems that were installed in New York State. The following is a list of the top ten residential solar counties during that time frame:

Top Ten Residential Solar Counties²⁶

County	Residential Solar 1-1-15 to 9-30-17
Suffolk	9282
Nassau	5476
Richmond	3494
Queens	3349
Orange	3272
Westchester	2735
Dutchess	1840
Rockland	1546
Albany	1517
Ulster	1455

23 - News Release: Go Green, Get Green: NYS Tax Department Reminds New Yorkers of Solar Energy Systems Equipment Credit, December 22, 2016 - <https://www.tax.ny.gov/press/rel/2016/solar122216.htm>

24 - Chapter 399 of Laws of 1997

25 - Letter to the Governor and Legislative Leaders, March 27, 2017 - http://eany.org/sites/default/files/documents/rggi_budget_letter_to_nys_legislature_3-27-17.pdf

26 - Solar Electric Programs Reported by NYSERDA: Beginning 2000

These ten counties accounted for nearly 50-percent of the residential solar installations. With the exception of Albany and Ulster, eight of the ten counties are located in the Metropolitan Transportation Authority service area. Absent data on which households took advantage of the solar personal income tax credit, it is not possible to draw a direct correlation on the geographic distribution of the RGGI funds. This is an issue worthy of further study by NYSEDA and the Department of Tax and Finance.

Electric Generation Facility Cessation Mitigation Program

The Electric Generation Facility Cessation Mitigation Program is a \$69 million fund administered by Empire State Development to provide property tax relief for local governments and school districts facing a loss of revenue attributed to the closure, temporary or otherwise, of a power plant. The fund was first established through legislation adopted in 2015²⁷ and it was subsequently amended in the 2016-17 State Budget and again in the 2017-18 State Budget to re-direct RGGI funds to cover the cost of the program.

The original 2015 statute restricted access to the program to municipalities and school districts facing significant reductions in property tax revenue due to the permanent closure of a fossil fuel fired power plant. The program allowed impacted municipalities and school districts to apply for up to five years of funding to help offset the decline in property tax payments from the retired generating facility. In order to fund the program, the law directed NYSEDA to make a contribution to the Urban Development Corporation (UDC) of an amount not to exceed \$19 million by April 1, 2016.

In 2016, prior to the program's implementation, the Legislature worked with the Governor to significantly amend the 2015 law. The amendments specifically targeted RGGI dollars as the funding source, directing NYSEDA to send \$30 million to UDC. The changes removed the requirement that any qualifying municipality must host an electric generating facility that has permanently ceased

operations and expanded eligibility beyond fossil fuel fired power plants, to all electric generating facilities—including nuclear facilities. The 2017-18 State Budget made further changes lengthening the amount of time municipalities and school districts can receive assistance from five to seven years and directing NYSEDA to commit another \$15 million in RGGI funds by April 1, 2020.

The removal of the permanent retirement language was significant because it opened the door for power plant owners to “mothball” a facility and reduce property tax payments, while preserving the option to return to service whenever market conditions are favorable. This scenario creates a situation where the state is subsidizing the power producer's property tax obligations absent any guarantee of long term carbon pollution reductions.

One of the first awards under the program came as a result of NRG's decision to “mothball” its Dunkirk Power Plant. In 2016, RGGI funds were awarded to the Dunkirk City School District, the City of Dunkirk, and Chautauqua County to offset reductions in NRG's property tax payments.²⁸ NRG is planning to bring the plant back online in the future after it undergoes



a repowering project that will allow the facility to run on either coal or natural gas. NRG will be able to take advantage of \$150 million in ratepayer subsidies to help pay for the repowering pursuant to a deal brokered by Governor Cuomo in 2013.²⁹

27 - Chapter 20 of the Laws of 2015

28 - News Release: Empire State Development Announces Dunkirk Taxpayers Will Receive Relief Following Power Plant Closures, November 17, 2016 - <https://esd.ny.gov/esd-media-center/press-releases/empire-state-development-announces-dunkirk-taxpayers-will-receive>

29 - News Release: Governor Cuomo Announces Dunkirk Power Plant to be Repowered and Expanded to Cost Effectively Meet Reliability Needs, Restoring Payments to Local Government and Preserving Jobs, December 15, 2013 - <https://www.governor.ny.gov/news/governor-cuomo-announces-dunkirk-power-plant-be-repowered-and-expanded-cost-effectively-meet>