



Rewiring America  
Michael Hernandez, Esq.  
New York Policy Director  
718-788-5021  
michaelh@rewiringamerica.org

September 1, 2023

State Fire Prevention and Building Code Council Members  
One Commerce Plaza  
Albany, NY 12231  
Code.development@dos.ny.gov

**Re: Demand letter to comply with state electrification laws in the 2024 Building Code Update**

Dear Members of the Building Code Council:

As Building Code Council members move forward with reviewing and approving the 2024 Building Code<sup>1</sup> Update, the undersigned stakeholders and organizations demand that the Building Code Council (hereafter, Council) comply with New York State's building electrification and energy efficiency laws. Council members should vote to approve a 2024 Building Code Update only if it complies with such laws. Following is a detailed explanation of these laws and their requirements.

On June 23, 2023, Building Code Council members met for the second quarter meeting and the Division of Codes and Standards (hereafter, Division) provided version 2.0 of the 2024 Building Code Update. Version 2.0 did not comply with New York's electrification laws but the Division said that the next version of the 2024 Building Code Update would comply with the All-Electric Building Act. The Division said that it would look into the requirements of the Building Codes and Standards Act which requires the recommendations of the Climate Action Council to be incorporated into the building code. The Division was silent on whether the next

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<sup>1</sup> For the purpose of this letter "Building Code" shall refer to both the Uniform Fire Prevention and Building Code and the Energy Conservation Construction Code.

version of the 2024 Building Code Update would include the requirements of the Climate Leadership and Community Protection Act. Dozens of organizations made comments during this meeting stressing the importance of Council members ensuring that the 2024 Building Code update complies with these laws. There were also many requests that the Division and Code Council ensure that the public has enough time to review the subsequent versions before any actions are taken on such a version.

## **I. Building Sector Action Needed to Meet New York State GHG Targets**

The New York Climate Leadership and Community Protection Act (CLCPA) of 2019 requires New York to limit statewide greenhouse gas emissions to 60% of 1990 levels by 2030 and 15% of 1990 levels by 2050 and achieve net-zero greenhouse gas emissions across New York State's economy.

Buildings are the largest source of greenhouse gas (GHG) emissions in New York State so the Council's duty to decarbonize the building sector is vital to achieving our statutorily required GHG reduction targets.<sup>2</sup> The Climate Action Council Scoping Plan, which provides the pathway to meet the GHG reduction targets, provides that, "energy efficiency and managed electrification in buildings will be critical to meet New York State's GHG emissions limits under the Climate Act."<sup>3</sup> Building decarbonization is the reduction or elimination of GHG emissions from building end uses through energy efficiency improvements to reduce energy demand and through switching from equipment and systems powered by burning gas, oil, or other fossil fuels to highly efficient equipment and systems powered by zero-emission energy sources.<sup>3</sup>

## **II. New York's 2024 Building Code Update Must Incorporate New York's Electrification and Energy Efficiency Laws**

New York State law requires the council to periodically update the Building Code to reflect the new objectives and standards that the legislature has added to the Building Code Act.<sup>4</sup> The 2024 Building Code will be the first time that Building Code Council members update the New York State Building Code since the enactment of three laws requiring the Building Code Council to update the NYS Building Code to reflect New York's Greenhouse Gas emissions reduction targets.

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<sup>2</sup> Statewide Greenhouse Gas Emissions Report, NYS Department of Environmental Conservation <https://www.dec.ny.gov/energy/99223.html>

<sup>3</sup> Climate Action Council Scoping Plan, page 176

<sup>4</sup> Article 18 of the Executive Law

Executive Law § 377 provides:

New York State Uniform Fire Prevention and Building Code. 1. The council shall formulate a uniform fire prevention and building code...The council ... **shall periodically review the entire code to assure that it effectuates** the purposes of this article and **the specific objectives and standards hereinafter set forth.**

Currently, the New York State Building Code is updated every three to five years and incorporates the updates of the International Code Council (ICC) model building code which is issued every three years. The ICC issued model code in 2018 and 2021, and is releasing the 2024 code this year. Generally, it takes New York State another two years after receiving the ICC model building code to incorporate the updates into New York's Building Code. New York's current 2020 Building Code is based largely on the ICC's 2018 building code model with some of the 2021 ICC building code model included. The Building Code Council is also required to incorporate any building code related laws enacted by the State of New York since the last building code update. The 2024 NY Building Code Update must incorporate the three laws enacted since the 2020 Building Code Update. New York cannot wait until the next NYS Building Code Update, which won't occur until 2027 to 2029, to decarbonize our building sector.

### **A. Three Enacted Building Electrification and Energy Efficiency Laws**

Since 2019, New York has enacted three laws requiring the Building Code Council to consider the State's greenhouse gas emissions reduction targets and to update the State Building Code to reflect those goals. The 2024 Update must incorporate all requirements from these three Acts:

1) On May 3, 2023, Governor Hochul signed into law the All Electric Building Act<sup>5</sup> (AEBA) as part of the 2023-24 New York State Budget.

2) On July 5, 2022, the State enacted the Advanced Building Codes, Appliance and Equipment Efficiency Standards Act<sup>6</sup> (Advanced Building Codes Act).

3) On July 18, 2019, the State enacted the Climate Leadership and Community Protection Act<sup>7</sup> (Climate Act).

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<sup>5</sup> Chapter 54 of 2023

<sup>6</sup> Chapter 374 of 2022

<sup>7</sup> Chapter 106 of 2019

1. **The All Electric Building Act requires the Council to: i) recognize the importance of the decarbonization of new and existing buildings to achieve our climate goals, ii) to update the building code to achieve our climate goals and iii) to prohibit fossil fuel combustion systems in new construction**

On May 3, 2023, the AEBA updated the purpose of the Building Code Council to make it the Council's official policy to recognize that decarbonization of new and existing buildings is closely related to the State's clean energy and climate agenda, and that the building code is to enable the State's greenhouse gas reduction and clean energy objectives.

Executive Law § 371(2) has been updated to the following language:

New York State Uniform Fire Prevention and Building Code Act:... Statement of legislative findings and purposes... 2. The legislature declares that it shall be the public policy of the state of New York to:...(3) recognize that **the decarbonization of new and existing buildings** is closely related to the state's clean energy and climate agenda as described in the New York Climate leadership and community protection act ...and that **the uniform code shall enable the state's clean energy objectives...**

#### **a) Prohibition of Fossil Fuel Combustion Building Systems and Equipment**

The AEBA requires all newly constructed buildings in New York State to be built with all-electric building systems and equipment. Accordingly, the 2024 Building Code Update must include the prohibition of fossil-fuel combustion equipment and building systems as provided by law.

Executive Law 378 (19) has been updated to provide:

**Standards for New York state uniform fire prevention and building code...** To support the **goal of zero on-site greenhouse gas** reduction requirements...**the uniform code shall prohibit the installation of fossil-fuel equipment and building systems**, in any new building not more than seven stories in height, except for a commercial or industrial building greater than one hundred thousand square feet in conditioned floor area, on or after December thirty-first, two thousand twenty-five, and the uniform code shall prohibit the installation of fossil-fuel equipment and building systems, **in all new buildings** on or after December thirty-first, two thousand twenty-eight.

Energy law 11-104 (6) has been updated to provide:

**State Energy Conservation Construction Code Act...**to support the **goal of zero on-site greenhouse gas emissions** and help achieve the state's clean energy and climate agenda...the **code shall prohibit the installation of fossil-fuel equipment and building systems**, in any new building not more than seven stories in height, except for a new commercial or industrial building greater than one hundred thousand square feet in conditioned floor area, on or after December thirty-first, two thousand twenty-five, and the code shall prohibit the installation of fossil-fuel equipment and building systems, **in all new buildings** after December thirty-first, two thousand twenty-eight.

**b) Exemptions to the fossil fuel combustion prohibition are limited**

While the AEBA provides for some limited exemptions to the prohibition of fossil fuel combustion systems and equipment in new construction, the law also makes it clear that those exempted areas must be electrification ready to the fullest extent feasible. The meaning of feasibility was limited in the statute by clarifying that financial considerations cannot be a sufficient basis to determine physical or technical infeasibility.

Energy law 11-104(7)(c) has been updated to provide:

Where the code includes an allowed exemption...such exemption shall include provisions that, **to the fullest extent feasible, limit the use of fossil-fuel equipment and building systems** to the system and area of the building for which a prohibition on fossil fuel equipment and building systems is infeasible; **require the area or service within a new building where fossil-fuel equipment and building systems are installed to be electrification ready...** and **minimize emissions** from the fossil-fuel equipment and building systems that are allowed to be used... **Financial considerations shall not be sufficient basis to determine physical or technical infeasibility.**

**2. The Advanced Building Code Act Requires Council to Conform to the State Energy Policy and incorporate the recommendations of the Climate Action Council.**

**a) State Energy Policy**

On July 5, 2022, the Advanced Building Code Act updated the State Energy Policy to require that the Building Code Council actively promote greenhouse gas reduction in the construction and operation of new buildings and the rehabilitation of existing buildings.

Energy Law 3-101(2) provides:

It shall be the energy policy of the state...to encourage conservation of energy and **to promote the clean energy and climate agenda, including but not limited to greenhouse gas reduction...in the construction and operation of new construction** and operation of new commercial, industrial, agricultural and residential buildings, **and in the rehabilitation of existing structures**, through heating, cooling, ventilation, lighting, insulation and design techniques...

Energy law 3-103 provides:

Conformance with state energy policy. Every agency of the state **shall conduct its affairs so as to conform to the state energy policy** expressed in this chapter.

#### **b) Climate Action Council Recommendations**

The Advanced Building Code Act<sup>5</sup> updated the law to require the Building Code Council to update the Building Code to include the recommendations of the Climate Action Council to the fullest extent feasible.

Council members should only approve a proposed Building Code that includes the recommendations of the Climate Action Council.

The Building Code Council must demonstrate that they reviewed all of the recommendations of the Climate Action Council relevant to the Building Code, as set forth in the Scoping Plan, and at a minimum conducted a feasibility analysis to determine the fullest extent feasible that the recommendations could be included in the Building Code.

The council cannot completely disregard the law requiring the Building Code to be updated to reflect the recommendations of the Climate Action Council without any analysis. If a feasibility analysis is completed by the Building Code Council it should be made public.

Energy Law § 11-104 (6) provides

State Energy Conservation Construction Code ...To the fullest extent feasible, the **standards for construction of buildings** in the code **shall be designed** to help achieve the state's clean energy and climate agenda, including but not limited to greenhouse gas reduction ...**as further identified by the New York state climate action council**...

### c) Highly efficient newly constructed buildings by 2025

The Climate Action Council scoping plan found that when new buildings are constructed there are cost-effective opportunities for decarbonization. The Climate Action Council scoping plan recommends that the Building Code Council updates the Building Code to include highly efficient newly constructed buildings by 2025. The Energy law requires that the Building Code Council update the Building Code to include the Climate Action Council's recommendation that new building construction is highly efficient to the fullest extent feasible.<sup>8</sup>

Accordingly, the 2024 Building Code Update must require that permits filed for the construction of a new building starting in 2025 include the following Highly Efficient requirements: highly insulated thermal performance and air tightness; electric readiness for space conditioning, hot water, cooking and dryers; electric vehicle readiness where parking is provided; and solar wherever the opportunity exists and is feasible.

Ultimately, the Building Code Council has been delegated the discretion to determine what is the fullest extent feasible to incorporate the highly efficient newly constructed building recommendation in the 2024 Building Code. However, the Building Code Council cannot simply ignore the law requiring this recommendation to be included in the 2024 Building Code Update. Climate Action Council recommendation B1. provides:

**Update regulations [Building Codes] to improve energy efficiency:** 2025: Adopt highly efficient State Energy Code (New York State Energy Conservation Construction Code) for new construction of residential and commercial buildings to **require highly insulated thermal performance and air tightness; EV electric readiness where parking is provided; and solar wherever the opportunity exists and is feasible** These requirements should apply to construction of buildings that file for a building permit starting in 2025.<sup>9</sup>

Energy Law § 11-103 2(b) also provides specific energy savings mandates for this code update.

(b) When adopting the first amended version of the code next following the effective date of the chapter of the laws of two thousand twenty-two that added this paragraph and any subsequent codes, the state fire prevention and building code council shall use its best efforts to **adopt provisions for residential buildings that achieve energy savings greater than energy savings achieved by the then most recently published**

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<sup>8</sup> Energy Law § 11-104 (6)

<sup>9</sup> Climate Action Council's Scoping Plan, Recommendation B1; page 186, <https://climate.ny.gov/Resources/Scoping-Plan>

**International Energy Conservation Code and to adopt provisions for commercial buildings that achieve energy savings greater than energy savings achieved by the then most recently published ASHRAE 90.1**, both at levels recommended by the New York State Energy Research Development Authority, provided that the state fire prevention and building code council determines that such advanced energy savings can be achieved while still meeting the cost effectiveness considerations contemplated by this subdivision.

#### **d) Resilient New Construction by 2025**

The Climate Action Council scoping plan found that building resilience is the ability of the building system to be prepared for, withstand, adapt, and quickly recover from disruptions such as severe weather, power outages, and chronic changes to the climate.<sup>10</sup> The Climate Action Council recommended that the Building Code Council update the 2024 Building Code Update to require newly constructed buildings to be resilient.

The Energy law requires the Building Code Council to include the resilient new construction requirement into the 2024 Building Code to the fullest extent feasible.

Accordingly, 2024 Building Code Update must require that permits filed for the construction of a new building starting in 2025 include the following resilient requirements: require energy storage or on-site renewable energy generation that is able to operate independent of the grid; require grid-interactive electrical appliances as feasible (such as batteries and hot water heaters) to support grid reliability; and eliminate barriers to residential adoption of ground source heat pumps.

Climate Action Council Recommendation B1 provides:

**Update regulations [Building Codes] to improve ... building resilience: 2025:** Adopt additional building resilience features into State codes for new construction to **require energy storage or onsite renewable generation** that is able to operate independent of the grid, with specifications for sizing to meet resilience demands. Also **require grid-interactive electrical appliances** as feasible to support grid reliability and eliminate barriers to residential adoption of ground source heat pumps.<sup>9</sup>

### **3. The Climate Act requires the Building Code Council to Consider the State's Greenhouse Gas Reduction Goals and Prohibits Disproportionate burdens on Disadvantaged Communities**

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<sup>10</sup> Climate Action Council's Scoping Plan, Recommendation B1; page 185



**a) The Building Code Council must Consider the State's Greenhouse Gas Reduction Goals**

On July 18, 2019, the Climate Leadership and Community Protection Act (Climate Act) was signed into law. New York State's Climate Act is among the most ambitious climate laws in the nation and requires New York to reduce economy-wide greenhouse gas pollution 40 percent by 2030 and no less than 85 percent by 2050 from 1990 levels.

The Climate Act requires the Department of State, Division of Codes and Standards and the Building Code Council to consider if their approval of the 2024 Building Code is inconsistent with or will interfere with the attainment of the state's greenhouse gas reduction targets. Since the building sector is the largest source of greenhouse gas pollution in New York State, the Building Code Council's duty to consider such climate-crisis requirements is of vital importance.

The Building Code Council must determine whether the 2024 Building Code Update as a whole will support our greenhouse gas reduction targets. If the 2024 Building Code Update is inconsistent with those limits, the Council must provide a detailed statement of justification for why the Building Code Council will approve a 2024 Building Code Update that is inconsistent with the state's greenhouse gas emissions limits.

Climate Act § 7(2) provides

In **considering and issuing... administrative approvals and decisions...all state agencies...and divisions...shall consider** whether such decisions are **inconsistent with or will interfere with attainment of the statewide greenhouse gas emissions limits...** Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, each agency **...shall provide a detailed statement of justification** as to why such limits/criteria may not be met...<sup>7</sup>

**b) Building Code Council impact on Disadvantaged Communities**

In addition to advancing New York's nation-leading climate and energy agenda, a fundamental objective of the Climate Act is to ensure that New York's transition to a clean energy economy works to address the structural disadvantages that have caused historically marginalized communities (e.g. people of color, indigenous, low-income, women) to bear a disproportionate burden of the impacts of climate change and pollution.<sup>11</sup>

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<sup>11</sup> Climate Action Council Scoping Plan, page 58

The Climate Act prohibits the Building Code Council, the Division of Codes and Standards and Department of State from approving an 2024 Building Code Update that continues to disproportionately burden disadvantaged communities and requires the Building Code Council to prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities when approving the 2024 Building Code Update.

Climate Act § 7(3) provides:

In considering and issuing ...administrative approvals and decisions... all state agencies ... and divisions **shall not disproportionately burden disadvantaged communities...** All state agencies ... and divisions shall also **prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities...**

The Climate Action Council scoping plan provides:

The Climate Act also contains important provisions that ensure agency decision-making does not disproportionately burden Disadvantaged Communities and prioritizes reductions of the GHG emissions and co-pollutants in these communities. These are priorities that **encompass all State agencies and authorities, and a coordinated approach to implementation is needed to ensure these provisions of law are integrated into agency actions.**

In order to assist the Building Code Council, the Division of Codes and Standards, the Department of State and others in determining how the Building Code creates barriers to decarbonizing buildings within disadvantaged communities and to identify opportunities to decarbonize buildings within disadvantaged communities, the Climate Act required that the Department of Environment Conservation, NYSERDA, NYPA and other agencies issue the Barriers and Opportunities report.

Climate Act § 6 provides:

**Report on barriers to and opportunities** for, community ownership of services and commodities in disadvantaged communities...department of environmental conservation...shall prepare a report on **barriers to...energy efficiency and weatherization investments ...adaptation measures to improve the resilience of homes and local infrastructure to the impacts of climate change...**other services and infrastructure that can reduce the risks associated with climate-related hazards...

The Climate Action Council Scoping Plan provides

As appropriate, **all state entities are expected to incorporate these three themes and eight recommendations into their**

**program administration and process** activities related to implementation of the Climate Act.

The Barriers and Opportunities Report recommends that State agencies and authorities **conduct a self-assessment** and barriers analysis **related to their policies and programs guided by the findings in the Report**. In conducting the self assessment and barriers analysis, each State entity should be expected to: Identify appropriate program staff to conduct the work and **phase it in according to a feasible and impactful timeline**; conduct a self assessment and barriers analysis that includes identifying the barriers and opportunities identified in the Report **that are applicable to the agency or authority's portfolio**; translate the results into a plan that identifies the relevant barriers and opportunities, specific workstreams that the agency or authority will undertake to address these barriers and opportunities, a timeline for each workstream, and expected outcome of each workstream.

In accordance with the Climate Act, the NYS Disadvantaged Communities Barriers and Opportunities report was issued in December of 2021. Pursuant to the Climate Act, the recommendations from the Barriers and Opportunities report were included in the Scoping Plan and pursuant to the Advanced Building Code Act must be incorporated into the Building Code to the fullest extent feasible.

The report identifies numerous barriers and opportunities related to the Building Code that the Building Code Council, the Division of Codes and Standards and Department of State must review and incorporate into the 2024 Building Code Update.

The Building Code Council should not approve the 2024 Building Code Update if it is in violation of the Climate Act's prohibition on disproportionately burdening disadvantaged communities and/or if the 2024 Building Code Update fails to prioritize ways to decarbonize disadvantaged communities.

The report specifically recommends to "update codes, rules, and policies that currently limit or prevent climate change solutions," to "increase building health and safety and energy code enforcement efforts and partnerships" and to "address building integrity from a health and safety perspective." The report states "Dramatic action must be taken at the intersection of environmental and housing policy to mitigate and adapt to climate change. The most vulnerable communities and households will bear the brunt of the changing climate and increasingly frequent and severe natural disasters." Below are some of the specific recommendations related to the 2024 Building Code Update:

The NYS Disadvantaged Communities Barriers and Opportunities Report Recommendation 8 provides:

Improve housing conditions and **adherence to local building codes...8a Address building integrity** from a health and safety perspective... 8e Increase building health and safety and **energy code enforcement efforts** and partnerships 8f **Bring energy code education and training to frontline contractors.**

The NYS Disadvantaged Communities Barriers and Opportunities Report<sup>12</sup> Recommendation 3 provides:

Work across intersecting challenges and interests to address needs holistically...3f **Update codes, rules and policies that currently limit or prevent climate change solutions.**

The NYS Disadvantaged Communities Barriers Opportunities Report Recommendation 5 provides:

**Establish people-centered policies,** programs and funding across local, State and federal governments ...5d Assess opportunities to merge, combine, or closely coordinate related programs across State agencies, to the extent consistent with legal requirements. 5e. Review and reemphasize the **State's role as the connector between federal and local programs and service across different market actors.**

### **III. The Building Code Council must comply with its clear legal obligations**

The Building Code Council has a clear legal obligation to update the Building Code in compliance with the All-Electric Building Act, the Advanced Building Codes, Appliance and Equipment Efficiency Standards Act, and the Climate Leadership and Community Protection Act. This means including in the 2024 Update:

- Permits filed for the construction of new buildings starting in 2025 include a prohibition of fossil fuel combustion building systems and equipment.
- Permits filed for the construction of new buildings starting in 2025 include the following highly efficient requirements: highly insulated thermal performance and air tightness;

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<sup>12</sup> NYS Disadvantaged Communities Barriers and Opportunities Report, <https://climate.ny.gov/-/media/Project/Climate/Files/21-35-NY-Disadvantaged-Communities-Barriers-and-Opportunities-Report.pdf>

electric readiness for space conditioning, hot water, cooking and dryers; electric vehicle readiness where parking is provided and solar wherever the opportunity exists and is feasible.

- Permits filed for the construction of new buildings starting in 2025 include the following resilient requirements: energy storage or on-site renewable energy generation that is able to operate independent of the grid; grid-interactive electrical appliances as feasible (such as batteries and hot water heaters) to support grid reliability; and eliminate barriers to residential adoption of ground source heat pumps.

This means that the council must do the following while preparing the 2024 Update:

- Recognize that the decarbonization of new and existing buildings is closely related to the State's clean energy and climate agenda as described in the Climate Act and update the building code to enable the state's objectives
- Promote the State's clean energy and climate agenda in the construction and operation of new construction and the rehabilitation of existing structures through heating, cooling, ventilation, lighting, insulation and design techniques.
- Determine whether approval of the 2024 Building Code Update is inconsistent with or will interfere with the attainment of the Statewide greenhouse gas emissions limits.
  - If determined it is inconsistent, provide a detailed Statement of Justification as to why the 2024 Building Code Update is inconsistent with the Statewide greenhouse gas emissions limits and why such limits cannot be met and identify any mitigation measures.
- Conduct a Disadvantaged Communities self-assessment and barriers analysis related to the 2024 Building Code Update as identified in the Disadvantaged Communities Barriers and Opportunities report.

- Do not approve a 2024 Building Code Update that continues to disproportionately burden disadvantaged communities or fails to incorporate the opportunities to remedy the existing disproportionate burden on disadvantaged communities.

The undersigned demand that Building Code Council members approve the proposed 2024 Building Code Update on September 22, 2023 or thereafter only if it is fully in compliance with such laws.

Sincerely,



**Michael Hernandez, Esq\***  
**New York Policy Director**  
**Rewiring America**

\*Attorney licensed in New York and California

- Nicole Abene, Senior Legislative & Regulatory Manager, Building Decarb Coalition
- Conor Bambrick, Director of Policy, Environmental Advocates
- Alex Beauchamp, Northeast Region Director, Food & Water Watch
- Jim Bernabeo, Homeowner, Smithtown NY
- Jay Best, CEO of Green Team LI and Board member of the NY State Building Performance Contractors Association
- Betta Broad, Director of Advocacy and Organizing, Association for Energy Affordability
- J.C. Calderon, AIA, NOMA, LEED AP, Immediate Past President, AIA Westchester + Hudson Valley Board of Directors
- John Ciovacco, President, Aztech Geothermal, LLC
- Steve Cowell, Northeast Energy Efficiency and Electrification Council
- Heather Deese, Senior Director of Policy & Regulatory Affairs, Dandelion Energy
- Stephan Edel, Coalition Coordinator, NY Renewables
- Ben Elkind, Lead Organizer, Religious Action Center of New York
- Adam Flint, NY Nest
- Assemblywoman Emily Gallagher
- Haym Gross, Founding Member & Architect, NYC 2030 District
- Anshul Gupta, Senior Policy Analyst, New Yorkers for Clean Power
- Clare Henrie, Director of Policy & Advocacy, Climate Solutions Accelerator of Genesee-Finger Lakes Region
- Thomas Hirasuna, Co-Chair, Climate Reality Finger Lakes Greater Region NY
- Christine Hoffer, Executive Director, New York Geothermal Energy Organization
- Sonal Jessel, Director of Policy, WE ACT for Environmental Justice
- Deb Peck Kelleher, Deputy Director, Alliance for Clean Energy New York
- Paul Kiesler, Co-Chair, Climate Reality Project NYC Chapter
- Sergei Krasikov, Chairperson, Beacon's Conservation Advisory Committee
- Janice Kruger, Lead, NY Chapter of Volunteers, Rewiring America

- Maura McNulty, Climate Reality Project, Capital Region Chapter
- Bill Nowak, NY-GEO board member
- Avni Pravin, Deputy Director, Alliance for a Green Economy
- Alex Ramel, Climate Policy Advisor, STAND.earth
- Anne Rabe, Environmental Policy Director, NYPIRG
- Michael Richardson, Co-founder and Core organizer, Rivers & Mountains GreenFaith
- Lucas Sanchez, Co-Executive Director, New York Communities for Change
- Assemblyman Tony Simone
- Irene Weiser, Coordinator, Fossil Free Tompkins
- Samantha Wilt, Analyst, NRDC
- Juan-Pablo Velez, Executive Director, Win Climate