

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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<b>In the Matter of Offshore Wind Energy</b>	<b>Case 18-E-0071</b>
<b>In the Matter of the Value of Distributed Energy Resources</b>	<b>Case 15-E-0751</b>
<b>Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard</b>	<b>Case 15-E-0302</b>
<b>In the Matter of Carbon Pricing in New York Wholesale Markets</b>	<b>Matter 17-01821</b>

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**PETITION OF MULTIPLE INTERVENORS AND  
INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.  
FOR RELIEF TO PROTECT NEW YORK CONSUMERS AND  
THE STATE’S COMPETITIVE WHOLESALE ELECTRICITY MARKETS  
FROM POTENTIAL DOUBLE-PAYMENTS FOR THE SAME ATTRIBUTE**

**PRELIMINARY STATEMENT**

Multiple Intervenors is an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State. Independent Power Producers of New York, Inc. (“IPPNY”) is a not-for-profit trade association representing the independent power industry in New York State.<sup>1</sup> Multiple Intervenors and IPPNY (collectively, the “Petitioners”) hereby jointly submit this

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<sup>1</sup> IPPNY’s members include nearly 75 companies involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York. IPPNY’s members include suppliers and marketers that participate in New York Independent System Operator, Inc. (“NYISO”) energy, capacity, and ancillary services markets and generate over 75 percent of New York State’s electricity using a wide variety of generating technologies including traditional fuels and renewables.

Petition to the New York State Public Service Commission (“Commission”) seeking relief to protect New York consumers, and the State’s competitive wholesale electricity markets, from potential double-payments for the same attribute. For the reasons set forth below, Multiple Intervenors and IPPNY urge the Commission to evaluate this Petition and grant the relief sought herein as expeditiously as practicable.

### **STATEMENT OF FACTS**

In Case 15-E-0302, the Commission adopted the Clean Energy Standard (“CES”) and the goal “that 50% of New York’s electricity is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030.”<sup>2</sup> The Commission described the CES as part of a long-term strategy “that aims to transform and decarbonize the way in which electricity is generated.”<sup>3</sup> A critical component of the CES is a requirement that load-serving entities (“LSEs”) procure renewable energy credits (“RECs”) in increasing amounts over time, the ultimate cost for such RECs being borne by retail consumers through higher commodity charges.<sup>4</sup> Pursuant to Commission policy, the New York State Energy Research and Development Authority (“NYSERDA”) procures RECs utilizing competitively-

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<sup>2</sup> Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (issued August 1, 2016) at 2 (footnote omitted).

<sup>3</sup> *See id.* at 77-78.

<sup>4</sup> *See id.* at 2 and 14-17.

solicited contracts with maximum durations of 20 years.<sup>5</sup> Thus, the procurement of RECs and the costs associated therewith are the responsibility of the Commission.

In Case 15-E-0751, the Commission addressed the level of compensation that should be paid for Distributed Energy Resources (“DER”), with the goal of establishing Value of Distributed Energy Resources (“VDER”) tariffs.<sup>6</sup> The VDER tariffs are intended to ensure “the development of clean generation needed to meet the necessary and aggressive goals embodied in the Clean Energy Standard ....”<sup>7</sup> The compensation paid to DER as a result of Case 15-E-0751 is based on a number of factors, all of which collectively comprise the “Value Stack.” One component of the Value Stack is compensation for the “Environmental Value” of certain forms of DER, which is “based on the higher of the latest CES Tier 1 Renewable Energy Credit (REC) procurement price published by NYSERDA or the Social Cost of Carbon (SCC).”<sup>8</sup> Eligibility for the Environmental Value is the same as the eligibility for Tier 1 RECs under the CES.<sup>9</sup> Another component of the Value Stack is the wholesale price of energy in the NYISO’s wholesale competitive energy market. Eligible DER projects receive compensation for the “Energy Value” of injections based upon NYISO day-ahead market hourly zonal locational-based marginal prices

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<sup>5</sup> Case 15-E-0302, *supra*, Order Approving Phase 1 Implementation Plan (issued February 22, 2017) at 30.

<sup>6</sup> See Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters* (issued March 9, 2017) at 1.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 15-16; *see also id.* at 104-07.

<sup>9</sup> *Id.* at 104-07.

(“LBMPs”).<sup>10</sup> The costs of the Value Stack, including the Environmental Value and the Energy Value, are recovered from retail consumers.<sup>11</sup> Projects eligible for the VDER tariffs are accorded compensation thereunder for 25-year terms.<sup>12</sup> Thus, the compensation of DER through VDER tariffs and the costs associated therewith are the responsibility of the Commission.

In Case 18-E-0071, the Commission currently “is considering adopting a goal that the quantity of electricity supplied by renewable resources and consumed in New York State be increased by the output of 2,400 MWs of new offshore wind [“OSW”] generation facilities by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030.”<sup>13</sup> In order to implement such a strategy, the Commission is considering requiring LSEs to procure, on behalf of their retail customers, Offshore Wind Renewable Energy Credits (“ORECs”).<sup>14</sup> NYSERDA’s costs to procure ORECs would be imposed on LSEs, which presumably would recover 100% of those costs from retail consumers.<sup>15</sup> NYSERDA would be tasked with procuring ORECs utilizing 25-year contract terms.<sup>16</sup> Thus, if the Commission mandates the procurement of ORECs, the costs associated therewith would be its responsibility.

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<sup>10</sup> *See id.* at 97.

<sup>11</sup> *See id.* at 29-30 and 32-39.

<sup>12</sup> *Id.* at 15 and 55-56.

<sup>13</sup> Case 18-E-0071, *In the Matter of Offshore Wind Energy*, Notice Soliciting Comments (issued April 11, 2018) at 1.

<sup>14</sup> *Id.* at 1-2.

<sup>15</sup> *See generally id.* at 4-8.

<sup>16</sup> *Id.* at 2.

While the Commission implements its CES and VDER programs, and considers implementation of an OSW program, the NYISO and its stakeholders currently are examining “concepts and proposals to incorporate the cost of carbon emissions into wholesale energy markets to better harmonize the state’s energy policies and the operation of those wholesale markets.”<sup>17</sup> Such examination is taking place within the Integrating Public Policy Task Force (“IPPTF”), which was created as a forum for a joint NYISO/State staff team to solicit feedback on those concepts and proposals.<sup>18</sup> The DPS also instituted an investigation of its own into carbon pricing issues and conducted a technical conference and solicited proposals and responses to questions with respect thereto.<sup>19</sup>

Based on a recently-issued proposal under consideration in the IPPTF (hereinafter, the “Straw Proposal”): (a) the cost of carbon emissions would be incorporated into NYISO-administered wholesale energy markets using a carbon price in dollars per ton of CO<sub>2</sub> emissions; and (b) suppliers would embed those additional carbon charges in their energy offers and thereby incorporate the carbon price into the commitment, dispatch and price formation through the NYISO’s existing processes.<sup>20</sup> The costs associated with possibly integrating carbon pricing into

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<sup>17</sup> See, e.g., Carbon Pricing Straw Proposal (dated April 30, 2018), available at: [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_miwg\\_ipptf/meeting\\_materials/2018-04-23/Carbon%20Pricing%20Straw%20Proposal%2020180430.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg_ipptf/meeting_materials/2018-04-23/Carbon%20Pricing%20Straw%20Proposal%2020180430.pdf).

<sup>18</sup> *Id.* at 3. The NYISO/State joint staff team is comprised of NYISO, New York State Department of Public Service (“DPS”) and NYSERDA staff. *Id.* at n.1. The Carbon Pricing Straw Proposal currently under discussion within the IPPTF was issued solely by the NYISO.

<sup>19</sup> Matter 17-01821, *In the Matter of Carbon Pricing in New York Wholesale Markets*, Notice on Process, Soliciting Proposals and Comments, and Announcing Technical Conference.

<sup>20</sup> See NYISO Presentation, *Carbon Pricing: Straw Proposal Overview* (dated May 12, 2018) at Slide 5, available at: [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_miwg\\_ipptf/meeting\\_materials/2018-05-14/Carbon%20Pricing%20Straw%20Proposal%20Presentation.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg_ipptf/meeting_materials/2018-05-14/Carbon%20Pricing%20Straw%20Proposal%20Presentation.pdf).

NYISO-administered wholesale energy markets would be borne indirectly (*i.e.*, via commodity charges from LSEs) by retail consumers.

Under the Straw Proposal, wholesale energy prices would be expected to rise to reflect the effective carbon charge whenever a carbon-emitting facility sets the LBMP. Although more than half of the electric generation in New York today has no associated carbon emissions, the marginal units in most hours in most locations in the State are fossil-fueled. Upon information and belief, such higher energy prices would be realized by all infra-marginal generation facilities including, but not limited to, (i) renewable generation facilities also receiving compensation for Tier 1 RECs under the CES, (ii) renewable DER projects also receiving compensation for the Environmental Value as part of the Value Stack in VDER tariffs, and, potentially, (iii) OSW generation facilities that also may qualify for compensation for ORECs, if the procurement thereof by LSEs is mandated by the Commission.

Within the IPPTF, a concern has been advanced by many stakeholders that the implementation of carbon pricing would or could create double-payments to the aforementioned non-emitting suppliers who are being or would be compensated for their non-carbon-emitting attribute pursuant to these Commission proceedings (*i.e.*, involving the CES, VDER, and OSW) and again, for a second time, under a possible carbon pricing regime. Ultimately, New York consumers would bear the cost of such double-payments. Moreover, the existence of double-payments would have the effect of distorting the State's competitive wholesale electricity markets.

The amounts in question are substantial. At an IPPTF meeting held on May 21, 2018, stakeholders were advised that pursuant to prior Renewable Portfolio Standard ("RPS") contracts and contracts from the first CES solicitation, "NYSERDA has current commitments to pay an average of approximately \$100 million in REC payments per year from 2022 through

2041.”<sup>21</sup> Upon information and belief, such REC payments do not include, *inter alia*, (i) REC payments committed to renewable generation facilities as part of future CES solicitations, (ii) payments of the Environmental Value to current and future DER projects under VDER tariffs, or (iii) any OREC payments potentially authorized and made to future OSW generation facilities. Additionally, at the May 21<sup>st</sup> IPPTF meeting, stakeholders were advised by representatives of DPS and NYSERDA that an ongoing CES solicitation is utilizing a standard contract that does not take into account the possible future implementation of carbon pricing.

This Petition advocates no position as to whether carbon pricing should be implemented by the NYISO and incorporated into the State’s competitive wholesale electricity markets.<sup>22</sup> The Petition also does not seek relief with respect to existing CES or RPS REC contracts.<sup>23</sup> Rather, this Petition seeks relief from the Commission, on an expedited basis, to prospectively protect New York consumers, and the State’s competitive wholesale electricity markets, from potential double-payments related to retail and wholesale compensation for the same or similar non-emitting attribute in the event that carbon pricing is implemented.

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<sup>21</sup> See NYSERDA, *5/21/18 IPPTF NYSERDA Statement*, available at: [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_miwg\\_ipptf/meeting\\_materials/2018-05-21/052118%20ipptf%20nyserda%20statement.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg_ipptf/meeting_materials/2018-05-21/052118%20ipptf%20nyserda%20statement.pdf).

<sup>22</sup> Each of Multiple Intervenors and IPPNY reserves all rights to advocate a full range of positions with respect to carbon pricing issues.

<sup>23</sup> Each of Multiple Intervenors and IPPNY reserves all rights to advocate a full range of positions with respect to existing CES REC contracts.

## ARGUMENT

### **THE COMMISSION SHOULD GRANT RELIEF, AND ACT EXPEDITIOUSLY, TO PROTECT NEW YORK CONSUMERS AND THE STATE'S WHOLESALE ELECTRICITY MARKETS FROM POTENTIAL DOUBLE-PAYMENTS FOR THE SAME ATTRIBUTE**

New York consumers currently pay – either indirectly in the case of RECs under the CES or directly in the case of the Environmental Value under VDER tariffs – for certain environmental attributes including, predominantly, electric generation without carbon emissions. Carbon-free electricity generation also appears to be a material consideration for the possible implementation of ORECs or other customer-funded payments to OSW facilities. Carbon pricing in the wholesale competitive energy markets administered by the NYISO, if implemented, would result in increased revenues, funded by New York consumers in the form of higher energy prices, for (i) renewable generation facilities also receiving compensation for Tier 1 RECs under the CES, (ii) renewable DER projects also receiving compensation for the Environmental Value as part of the Value Stack in VDER tariffs, and, potentially, (iii) OSW generation facilities that also may qualify for compensation for ORECs, if the procurement thereof by LSEs is mandated by the Commission. Significantly, however, inasmuch as such increased revenues under carbon pricing would be based on carbon emissions (or the lack thereof), there exists a substantial risk of large, consumer-funded double-payments for the same attribute. In addition to harming consumers financially, such double-payments would further impair the competitiveness of the State's wholesale electricity markets.

One of the purported benefits of incorporating a carbon price into the NYISO's commitment and dispatch signals is that it avoids or reduces the harm from artificial price suppression resulting from below-cost offers of capacity from resources that are in the market due,



in whole or large part, to the receipt of out-of-market payments. Such out-of-market payments to otherwise uneconomic resources are an ongoing and significant threat to, and undercuts the sustainability of, the NYISO's competitive wholesale electricity markets. Artificial price suppression through below-cost offers of capacity can distort market signals and harm otherwise economic merchant resources that rely upon the NYISO markets for their revenues. A potential result is that the NYISO's markets may not be able to provide the necessary price signals to incent the maintenance and the development of existing and new merchant resources that are necessary to meet reliability needs, thereby necessitating undue reliance on regulated, cost-based supply rather than market-based supply. The harm to the market caused by out-of-market compensation would be compounded if resources received a double-payment of the carbon emissions reduction value. Accordingly, the Commission needs to act, expeditiously, to eliminate, or at least minimize, the potential for such double-payments.

The linkage between carbon emissions and the CES, the Environmental Value in VDER tariffs, and the consideration of OSW is clear and unambiguous. As demonstrated, *supra*, the CES was enacted as part of a strategy to “reduce statewide greenhouse gas emissions by 40% by 2030” and “de-carbonize the way in which electricity is generated.”<sup>24</sup> Similarly, the Environmental Value in VDER tariffs is based on the higher of the latest REC price or the Social Cost of Carbon, and eligibility for it is the same as for RECs under the CES.<sup>25</sup> Additionally, the

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<sup>24</sup> Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard at 2 (footnote omitted) and 77-78. A related goal of the CES was “to preserve existing zero-emissions nuclear generation resources as a bridge to the clean energy future.” *Id.* at 2.

<sup>25</sup> Case 15-E-0751, *supra*, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters at 15-16 and 104-07.

consideration of ORECs and ways to ensure the development of a certain amount of OSW is “part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030.”<sup>26</sup>

Thus, a situation exists where, if carbon pricing is implemented, certain suppliers would be compensated twice – once via Commission orders involving long-term CES REC contracts, long-term commitments in VDER tariffs, and, potentially, long-term OSW OREC contracts, and a second time via wholesale LBMPs reflecting a carbon adder – for the very same attribute, *i.e.*, the absence of carbon emissions.<sup>27</sup> As noted, Petitioners do not address here the relative merits of carbon pricing, nor pre-existing CES or RPS REC contracts. Significantly, however, it appears that ongoing and perhaps future CES solicitations could result in new REC contracts that fail to address the possibility of carbon pricing implementation, notwithstanding public knowledge of the consideration and the evaluation of carbon pricing proposals within the IPPTF and a separate DPS matter. It is incumbent upon the Commission to identify and mitigate such potential overlapping recovery to safeguard consumers and the wholesale markets. Specifically, the Commission must take action to protect New York consumers, and the relative competitiveness of the State’s wholesale electricity markets, by, *inter alia*, eliminating, or at least minimizing, the possibility of double-payments in the event that carbon pricing is implemented by the NYISO sometime in the future.

Multiple Intervenors and IPPNY, representing large non-residential energy consumers and independent electric generators, respectively, have diverse – and sometimes

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<sup>26</sup> Case 18-E-0071, *supra*, Notice Soliciting Comments at 1.

<sup>27</sup> For example with respect to VDER tariffs, as eligible DER projects receive compensation for the “Energy Value” of injections based upon NYISO day-ahead market hourly zonal LBMPs, a subsequent increase in LBMPs to internalize the cost of carbon would provide the DER projects a clear double-payment for the exact same attribute if they continue to be paid for the Environmental Value.

adverse – interests on wholesale and retail electric issues. On this issue, however, Multiple Intervenors and IPPNY – and, based upon discussions in IPPTF meetings, many other stakeholders – are in complete accord. Suppliers should not be paid twice for the same attribute. If, *arguendo*, carbon pricing is implemented, then, absent the requested relief, such double-payments could occur, and they also could be substantial in magnitude and long-lasting. Accordingly, provisions must be made to account for the possibility that carbon pricing may be implemented by the NYISO. Under such circumstances, doing nothing – thereby potentially subjecting New York consumers and the State’s competitive wholesale electric markets to double-payments for the same attribute – would be neither equitable nor appropriate, and could prove very costly to consumers and competitive markets if carbon pricing ultimately is implemented in some form.

### CONCLUSION

For all the foregoing reasons, Petitioners urge the Commission to evaluate this Petition and grant the relief sought herein as expeditiously as practicable.

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Respectfully submitted,

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