STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act	**Case 20-E-0197**

COMMENTS OF MULTIPLE INTERVENORS ON UTILITY TRANSMISSION AND DISTRIBUTION WORKING GROUP REPORT

Dated: January 19, 2020

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PRELIMINARY STATEMENT

Pursuant to the Notice of Proposed Rulemaking published in the November 18, 2020 edition of the *New York State Register* (I.D. No. PSC-46-20-00008-P), Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments on the *Utility Transmission and Distribution Investment Working Group Report* ("Report"), filed by the State's major electric utilities[1] on November 2, 2020, in Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*.

A. Background

The Report proffers recommendations on local transmission and distribution investments the Utilities have identified as necessary to meet the objectives of the Climate Leadership and Community Protection Act ("CLCPA"), as well as planning, cost recovery, cost allocation, and stakeholder involvement matters related to such investments. Generally, the Utilities propose two phases of investments: Phase 1, which are "immediately actionable" projects that they assert satisfy traditional planning criteria and also further the objectives of the CLCPA; and Phase 2, which are projects still in an early stage of development that the Utilities claim are needed primarily to achieve CLCPA objectives. (Report at 24-25.) Notably, these Phase 1 and Phase 2 proposals would be in addition to investments justified on other grounds, such as safety and reliability projects. (*Id.* at 11.) Finally, the Report offers recommendations on stakeholder

[1] The Report was filed jointly by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk"), Orange & Rockland Utilities, Inc. ("O&R"), and Rochester Gas and Electric Corporation (collectively, the "Utilities").

involvement in the process, focusing on seeking developer input and providing information to various stakeholders.

Importantly, the proposed investments do not exist in isolation. Rather, they have been advanced in the context of the State's (and the Commission's) growing list of customer-funded initiatives to address climate change, as well as utility investments for reliability, safety, and compliance purposes. The total projected impact of these numerous initiatives has not been quantified but clearly will be extremely impactful on customers and future energy rates and prices.

B. Summary of Comments

In these Comments, Multiple Intervenors does not challenge the objectives of the Accelerated Renewable Energy Growth and Community Benefit Act (the "Act") or the CLCPA, nor does it dispute that the Commission must take reasonable and economic actions pursuant to such statutory mandates. Instead, these Comments emphasize that customer funds are not unlimited, particularly in the aftermath of the economic recession caused by the COVID-19 pandemic. Therefore, the Commission must take care to ensure that customers – and especially energy-intensive/trade-exposed businesses that are price-sensitive – are not burdened with excessive or unnecessary costs. Accordingly, Multiple Intervenors offers the following comments in the interest of ensuring that transmission and distribution projects developed as part of this proceeding truly are needed and, if so, are deployed in a logical, reliable, and cost-effective manner, and that the costs of such development are reasonably constrained and allocated equitably.[2]

[2] The Report is voluminous and detailed, and has a broad scope. Many of the assumptions and conclusions require significant technical expertise to fully address. Multiple Intervenors' Comments address the proposals in and issues arising from the Report that are most impactful and best addressed by a study overseen by New York State Department of Public Service Staff ("DPS Staff") that is designed specifically to quantify the impact of the combined proposed spending by the Utilities on consumers and invites consumer input on the study results. Silence

First, under almost any scenario, customers will fund CLCPA-driven transmission and distribution investments regardless of why such investments are built. Therefore, the cost of these proposed projects – currently estimated to be at least $17 billion (*see* Report at 76-77) – needs to be evaluated in the context of the other significant costs that utility customers currently are being required to shoulder, and additional ones that they likely will be forced to bear.

Second, the process for examining whether the projects proposed by the Utilities are in the public interest, and the approval of the cost of such projects, must ensure that there is adequate opportunity for the customers that would bear the costs to participate.

Third, as a general rule, Phase 2 projects should be reviewed and approved in the context of each utility's rate cases, so that the impacts of the projects can be considered along with the other capital investments and operating expenses that each utility is seeking to recover. Rate case consideration of these projects also is needed to ensure that the costs are allocated fairly among the utility's service classes. Finally, as the Utilities note (Report at 57-58), because this approach could result in inequitable cost sharing among the Utilities, the Commission must be prepared to adjust how Phase 2 costs are collected using the "beneficiaries pay" model that the Commission has employed to ensure equitable sharing of public policy transmission projects.

Fourth, in the interest of cost-effectiveness and protecting customers, the proposed Benefit-Cost Analysis ("BCA") methodology requires refinement to ensure that it identifies cost-effective investments, as well as other proposed investments that are not cost-effective and should be postponed or rejected.

Finally, CLCPA-driven projects must be subject to robust cost-containment measures considering the magnitude of their costs, and their potential to be approved outside rate

on any particular issue, conclusion, proposal, or recommendation advanced in the Report should not be construed as support or opposition thereto.

proceedings. Such cost-containment measures would protect customers from unnecessary or excessive costs and encourage cost-effectiveness generally. Wherever possible, the proposed incurrence, allocation, and recovery of specific costs should be addressed and implemented within rate proceedings, where the totality of amounts recovered from customers are evaluated.

COMMENTS

POINT I

SPENDING ON PROJECTS IDENTIFIED IN THE REPORT MUST BE CONSIDERED IN THE CONTEXT OF OTHER SPENDING

The magnitude of the investments the Utilities propose is enormous. The approximate cost of the proposals in the Report is $17 billion, a value that will grow when utility returns on such investments are considered. (Report at 76-77.) Moreover, this cost is an order of magnitude cost; Niagara Mohawk, for example, estimates that actual costs could range from -50% to +200% of its given cost figure. (*Id.* at 76-77, 161.) The $17 billion figure, therefore, is in all likelihood understated in terms of actual costs that would be borne by customers.

Importantly, the costs for Phase 1 and Phase 2 projects would be incremental to an ever-expanding list of financial obligations being imposed on customers. For example, the proposed Phase 1 and Phase 2 investments would be in addition to local transmission and distribution projects justified on reliability, safety, or compliance grounds. (*Id.* at 13-15.) Such costs are in turn layered atop a growing list of customer-funded climate-related initiatives. Those initiatives include: (a) Clean Energy Fund collections; (b) financial payments to selected, existing nuclear facilities; (c) financial payments to new land-based renewable resources; (d) financial payments to existing land-based renewable resources; (e) financial payments to new offshore wind facilities; (f) massively expanded energy efficiency programs; (g) new heat pump programs; and (h) large electric vehicle infrastructure investments.

In essence, customers who already are funding billions of dollars in traditional local transmission and distribution infrastructure projects and in climate and other public policy initiatives, now would be asked (or forced) to fund billions of dollars more in incremental CLCPA-driven projects. Customer funds are not unlimited, and the Commission must assess the impact of this spending on each utility's customers. Accordingly, it is imperative that the spending projected in the Report be analyzed in conjunction with the other projected utility spending, preferably in a rate case setting, so that a meaningful analysis of the potential impacts on New York State electric consumers can be performed.

POINT II

CUSTOMERS REQUIRE MEANINGFUL OPPORTUNITIES TO PARTICIPATE IN LOCAL TRANSMISSION AND DISTRIBUTION PLANNING AND APPROVAL

The planning and approval processes for the projects proposed by the Utilities must include an adequate opportunity for customers to examine the associated costs and comment on whether the projects are in the public interest, and, if developed, how the prudently-incurred costs should be collected. The Utilities acknowledge that customers would fund the proposed investments, and aver that the beneficiaries of the investments proposed in the Report are customers. Incongruously, however, they spend very little time outlining how those customers can participate in the review and approval processes for the proposed projects. Case in point is that, when considering cost recovery of CLCPA-related investments, the customers from which costs are recovered are not always listed as a "key stakeholder group." (Report at 47.) When customers are noted, it is usually in the context of "information gathering" instead of an "input opportunity." (*See id.* at 44-45, 47.) However, limiting customer engagement largely to "information gathering" provides no meaningful input opportunity for customers. Given the likelihood that customers are going to foot the bill for new incremental investments – on top of numerous other initiatives, all while the State

attempts to recover from an economy-crippling economic recession caused by the COVID-19 pandemic – one would expect utilization of a process highly dependent upon customer input.

Moreover, cost-effectiveness is fundamental to the Report and this proceeding generally. (*E.g.*, *id.* at 64-65.) Inasmuch as customers would fund these CLCPA-driven investments, they have by far the strongest incentive to control costs. Robust customer participation therefore helps ensure cost effectiveness and should be encouraged.

Therefore, Multiple Intervenors requests that customers be accorded meaningful input and participation opportunities commensurate with their position as the purported beneficiaries and expected ultimate funding source of the investments the Utilities propose. To that end, to the greatest extent possible, capital spending on the projects in question should be considered in the context of utility rate cases, where customers and other interested parties can conduct discovery and provide input, and where the spending is considered in the context of other spending that will affect customers' rates and bills. Further, any project proposed outside of the rate case process (a situation that should be avoided to the greatest extent possible) should be subject to a quasi-hearing process that includes opportunities for information gathering and customer input that is equivalent to what is afforded in a rate proceeding.

POINT III

PHASE 2 LOCAL TRANSMISSION AND DISTRIBUTION PROJECT COSTS SHOULD BE ALLOCATED AND RECOVERED EQUITABLY

The Report proposes statewide cost allocation of Phase 2 transmission projects on a load-share ratio basis (*e.g.*, Report at 59). According to the Utilities, because Phase 2 projects are intended to further the goals of the CLCPA, Phase 2 costs ought to be allocated statewide similar to certain other public policy programs. (*Id.* at 3.) However, the Utilities note that there currently is no mechanism for allocating the costs of a project wholly within one utility's service territory

to the customers of another. (*See id.* at 48.) As such, the Report proposes four mechanisms to achieve statewide cost allocation and recovery.

Multiple Intervenors generally agrees with the Utilities' primary position that they should seek recovery of Phase 2 project costs through the rate case process. To the extent that such cost recovery is sought outside of the rate case process, a review and approval process equivalent to that performed in a rate case should be undertaken. This would ensure that the project costs are subject to thorough review by DPS Staff and interested parties, including the consumers that potentially would bear the costs. Rate case consideration also ensures that there is a process to fairly allocate the project costs among a utility's service classes.

As the Utilities point out, however, rate case recovery of Phase 2 projects may result in inequitable cost allocations among the Utilities, particularly where the Phase 2 project is designed to, or by default will, primarily provide benefits to customers of another utility. The Utilities' proposed remedy – to test whether the rate case methodology lines up with a hypothetical statewide allocation of Phase 2 costs using a load-share allocation – is not acceptable. Instead, the proper comparison is how the costs would be allocated using the "beneficiaries pay" model that the Commission has employed to ensure equitable sharing of public policy transmission projects. Finally, for the reasons set forth below, the alternative allocation and cost recovery mechanisms suggested by the Utilities are problematic and should be rejected.

A. CLCPA-Driven Investments Should Be Reviewed and Allocated in Rate Cases

The first cost allocation proposal offered by the Utilities is the simplest: the costs of Phase 2 transmission would be allocated to and recovered from the customers of the utility proposing the project. (*Id.* at 49-51.) The Utilities conclude that this is not in fact statewide cost allocation, but that it could *approximate* statewide cost allocation "if all transmission CLCPA investments were collectively shared statewide, pursuant to a regional cost allocation formula." (*Id.* at 48.)

Alongside such an approach, the Report proposes that the Commission track Phase 2 expenditures to measure the degree to which traditional rate case recovery approximates statewide allocation. (*Id.* at 49-50.) Alternative recovery methods could be employed if "reasonable equity" cannot be achieved. (*Id.* at 51.)

Multiple Intervenors agrees that in the first instance the Utilities should be responsible for recovering their own Phase 2 project spending through a rate case or equivalent process. Rate case recovery is "expedient and simple," (*id.* at 49) and foregoes the need to develop and approve alternative allocation and recovery methods. Moreover, rate cases provide transparency and an opportunity for customers to participate, and thus are likely to produce the most equitable results. Where the benefits that arise from Phase 2 investments – resiliency, reliability, operational flexibility – accrue to the customers of the utility in whose service territory the investment is built, rate case recovery could reflect equitable application of the beneficiaries pay principle. Additionally, in this circumstance customers that would bear the cost of Phase 2 investment would be able to intervene in the rate case and advocate for their interests, consistent with Point II, *supra*.

As importantly, a fundamental tenet of utility ratemaking is that costs should be collected based on cost-causation principles, and rate cases provide a unique setting to ensure that those principles are applied. It is not enough to ensure that the costs incurred for Phase 2 projects are scrutinized before they are approved for collection; the method of collection from customers also must be equitable. For example, consistent with cost-causation principles, distribution-related costs should not be allocated to transmission and sub-transmission customers, and fixed costs generally should be collected through demand or customer charges. A rate case is where these ratemaking principles are applied, and the need to ensure equitable allocation of costs among and within utility service classes is added support for considering Phase 2 projects in rate cases.

As the Utilities note, however, the rate case cost recovery approach could result in inequitable inter-utility cost sharing (*Id*., 57-58), and the Commission must guard against this significant potential problem. For example, there may be situations where the level of Phase 2 projects deemed desirable by the Commission to move renewable power from upstate to downstate could unfairly burden the customers of upstate utilities. Because of this, ideally all Phase 2 projects should be proposed at the same time and, at the outset, the Commission should evaluate whether the flow of benefits from the project require that the rate case cost recovery mechanism be adjusted. In doing so, the Commission should utilize the equitable application of the "beneficiaries pay" principle discussed below, and not the load-ratio share allocation advocated by the Utilities.

Finally, as noted below, the alternative allocation and recovery mechanisms proffered by the Utilities, while perhaps administratively convenient for them, fully ignore cost-causation principles and should be rejected. In many circumstances – and certainly when dealing with investments even remotely approaching the magnitude of those proposed herein – equity should prevail over administrative convenience when evaluating and approving cost allocation and cost recovery mechanisms.

B. The Analysis of Equitable Statewide Cost Allocation Should Be Based on the "Beneficiaries Pay" Principle

CLCPA-driven transmission investments will provide many benefits well beyond reduced emissions. The Report itself identifies such benefits in its proposed BCA framework. The "primary benefit" the Report identifies is to reduce curtailments by moving renewable energy on and off the bulk system. (*Id.* at 33-36.) This not only delivers more renewable energy, but also provides economic benefits to certain customers arising from reduced curtailments as lower-cost energy is available for more hours of the day.[3] Additionally, the Report identifies reduced

[3] The unbottling of generation from transmission constrains may provide statewide benefits, but, concurrently, typically results in reduced energy prices in some regions and increased energy

production costs and congestion, improved resiliency and operational flexibility as benefits. (*Id.* at 36.) These benefits would not necessarily flow equally to all customers statewide or even to the customers that would pay for them. Rather, some or even most of these benefits may accrue to customers that, under a traditional rate case approach, would not pay for them. Accordingly, the Commission must be vigilant in ensuring that the preferred rate case treatment of such investments is equitable, and be prepared to alter that recovery method when needed.

In assessing whether Phase 2 projects are being recovered equitably on a statewide basis, the Commission should evaluate all such projects contemporaneously using the well-established "beneficiaries pay" principle that was adopted to allocate costs arising from public policy transmission ("PPTN") investments. In 2014, the Commission undertook an examination of the best way to allocate public policy costs statewide. There, it found that a load-ratio share approach did not accurately reflect the benefits that accrue to customers.[4] Instead, the Commission determined that the costs arising from selected PPTN projects should be allocated only 25% on a load-ratio share basis, with the remaining 75% allocated to the economic beneficiaries of such projects.[5] Under this approach, the customers receiving the benefits of public policy driven investments bear the bulk of the costs.[6] As detailed above, although the Phase 2 investments

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prices in other reasons. In other words, eliminating or reducing a transmission constraint usually provides net benefits to customers downstream of the constraint, while placing upward price pressure on upstream customers. Such differences in regional impacts are not referenced here for the purpose of opposing truly beneficial projects but, rather, to emphasize that projects similar to those advanced herein by the Utilities can have very disparate impacts on customers in different regions. Therefore, ensuring equity at least in terms of cost allocation is critically important and should not be sacrificed simply because it may be easier to socialize certain costs.

[4] *See* Cases 12-T-0502 *et al.*, *supra*, *Order Establishing Modified Procedures for Comparative Evaluation* (issued December 16, 2014) at 41.

[5] *Id.*

[6] *Id.*

arguably provide statewide benefits associated with achieving CLCPA goals, they also may provide benefits that inure directly to the customers of a utility that is not the host of one or more Phase 2 projects. To the extent that the preferred rate case allocation and recovery mechanism fails to fairly satisfy the "beneficiaries pay" mechanism established for PPTN projects, the Commission must be prepared to make adjustments to the rate case cost recovery mechanism.[7]

C. The Alternative Allocation and Recovery Mechanisms Are Problematic

Should the traditional rate case method fail to achieve an equitable result, the Utilities propose three alternatives in the Report. First, they state that the New York State Energy Research and Development Authority ("NYSERDA") could use System Benefits Charge ("SBC") revenues, or revenues from a new or expanded surcharge, to reimburse the Utilities for projects. (*Id.* at 54.) Second, they propose that renewable generators would contribute to the costs of investments that deliver those generators' power to load. (*Id.* at 56-57.) Third, the Utilities could pursue voluntary agreements to share the costs of projects. (*Id.* at 52.) For the reasons set forth below, all of these approaches have shortcomings that render them less desirable and equitable than the traditional rate case approach and, therefore, should be rejected.

First, NYSERDA payments are an inequitable mechanism of cost allocation and recovery because SBC payments are collected from customers on a volumetric basis. This method of cost recovery places a disproportionate and wholly inequitable burden on energy-intensive – and price-sensitive – customers. Even a seemingly small increase in SBC collections can increase costs to large, high-volume customers by hundreds of thousands if not millions of dollars annually. In addition, as with the load-ratio share allocation, volumetric recovery of these costs would not

[7] As discussed in Point I, *supra*, any recovery outside of rate cases should employ a quasi-hearing process analogous to that of a rate case to ensure adequate customer participation and input.

reflect the aforementioned benefits CLCPA-driven projects provide, which is contrary to cost causation and beneficiaries pay principles.[8]

The Utilities' second alternative – renewable generator contributions – also is a flawed approach. The proposed CLCPA-driven investments deliver renewable generator power to load centers; renewable generators are in fact beneficiaries of such investments. As the Report identifies, however, renewable generators would recover such costs from customers anyway, such as through Renewable Energy Credits, Offshore Wind Renewable Energy Credits, or wholesale energy prices. Because these costs currently are being collected volumetrically (notwithstanding arguments in favor of more-equitable approaches), this cost collection alternative suffers from the same infirmities as NYSERDA-based SBC recovery payments: namely, it ignores cost causation and beneficiaries pay principles and places a disproportionate and unfair burden on large, high-load-factor customers.

Finally, the Utilities' alternative proposal to use voluntary agreements should be rejected. Initially, there is no guarantee that the Utilities would voluntarily agree to allocate costs equitably, or that they could even reach an agreement. (*Id.* at 52-53.) The Report claims that there might be a role for customer involvement in the development of such agreements but that claim is dubious, and far inferior to the rate case approach advocated earlier. Simply put, the proposal to use voluntary utility agreements to collect costs on a statewide basis is half-baked and fraught with numerous procedural flaws. It also would accord the Utilities with responsibility for determining equitable cost allocations in the first instance – a responsibility that should rest with the Commission.

[8] For decades, investments in utility transmission and distribution system have been allocated to retail customers using demand-based allocators. To initiate recovery of such costs now using an energy-based allocator (such as the SBC) would be contrary to well-established cost-of-service principles and grossly inequitable to high-load-factor customers (that the State should be attempting to attract and retain).

POINT IV

PHASE 2 LOCAL TRANSMISSION PROJECTS REQUIRE MORE REFINED PLANNING CRITERIA

The Report states that there is currently no BCA for local transmission planning, and therefore proposes a BCA framework for projects or portions of projects driven by the CLCPA. (Report at 30.) The BCA would compare benefits against the revenue requirement impact of potential projects to arrive at net benefits, and thereby assess the relative cost-effectiveness of proposed Phase 2 projects. (*Id.* at 32.) This in turn would impact project prioritization and which projects are ultimately built. (*Id.*) In light of the magnitude of the costs proposed and the longevity of the investments, it is Multiple Intervenors' position that: (1) it is premature to apply any BCA test when the Phase 2 projects are, as stated in the Report, not complete, and subject to potentially extreme cost estimate variances; and (2) refinements to the proposed BCA process are needed.

At the outset, the Phase 2 projects presented in the Report require significantly more development before they can be evaluated using the BCA framework proposed. The Report describes proposed Phase 2 projects as "conceptual" and "in early state development, without completed, detailed designs and/or engineering." (*Id.* at 77.) Cost estimates also are identified as on an order-of-magnitude basis; for example, Niagara Mohawk states that its estimated costs may vary significantly, from -50% to +200%. (*Id.* at 161.) That such projects are at an early stage of development at this time is understandable; however, any project subject to the BCA would require significantly more binding information for the BCA to be useful.

Completed, detailed designs are fundamental to estimating both the costs and the benefits of any project. A revenue requirement impact that is unlikely to change materially is also essential – cost increases could render a project uneconomic at the expense of more beneficial CLCPA-driven projects. In the alternative, using the highest possible revenue requirement impact – the upper bound of the order of magnitude costs – would also contribute to BCA accuracy.

Accordingly, Multiple Intervenors urges that Phase 2 proposals be finalized before evaluation under the proposed BCA, or evaluated using the maximum possible revenue requirement impact. At the current time, it would be premature to evaluate, let alone approve, any Phase 2 proposal.

Regarding the proposed BCA itself, refinements to the BCA would yield more cost-effective projects. Notably, the Report identifies a host of benefits that could arise from CLCPA-driven projects aside from unbottling and delivering renewable energy, including reduced congestion, lower production costs, increased operational flexibility, and resiliency. (*Id.* at 36.)[9] Despite recognizing their existence, the BCA would not consider such benefits when evaluating CLCPA-driven local transmission projects. (*Id.*) Considering the magnitude of investments proposed in the Report, every opportunity for efficiency should be pursued. Moreover, equitable application of the beneficiaries pay principle cannot occur if only some benefits are considered but not others. Accordingly, Multiple Intervenors requests that the BCA account for all of the benefits – and all of the costs – that CLCPA-driven transmission provides.

Finally, the Utilities state that they would not require a BCA ratio of more than 1.0 for a proposed project to be considered cost-effective. (*Id.* at 40-41.) Multiple Intervenors submits that this undermines the very purpose of a BCA. BCAs measure costs against benefits to determine whether an expenditure is cost-effective. A BCA below 1.0 is, by definition, not cost effective. If the revenue requirement impact exceeds all of the benefits of a proposal, the proposal should be modified or abandoned in favor of more cost-effective proposals. CLCPA-driven local transmission deployment ought to be as efficient as possible; customers cannot afford to fund cost-ineffective local transmission that will affect their rates for decades. Indeed, a BCA ratio comfortably above 1.0 should be required as a cushion against cost estimates that often are

[9] It bears repeating that with decreased congestion comes lower electric prices for regions into which renewable power can now flow, and increased prices for formerly constrained regions.

speculative in nature and benefits that may not materialize. Inasmuch as the BCA contemplated here typically would pit largely-speculative benefits against "hard" costs that ultimately would be borne by customers, requiring a BCA ratio comfortably in excess of 1.0 simply is prudent and protective of customers' finances. Therefore, Multiple Intervenors recommends that the proposed BCA analysis, if adopted, require that projects have a BCA above 1.0 – preferably 1.25 – before they are advanced for approval and recovery or included in capital plans.

POINT V

CLCPA-DRIVEN PROJECTS SHOULD BE SUBJECT TO COST-CONTAINMENT MEASURES BEYOND CAPITAL BUDGET MANAGEMENT

The Report proposes to not subject CLCPA-driven local transmission to cost-containment measures beyond the current rate case capital judgment management paradigm. (Report at 64-65.) The Utilities' rationale is that the introduction of mandatory cost containment measures on top of the current paradigm would create "asymmetric risk" that would deter investment in CLCPA-driven infrastructure, as well as require an increase in return on equity "commensurate" with such risks. (*Id.*) Capital budget management alone (including downward-only reconciliation mechanisms) is likely insufficient to deliver cost-effective local transmission and to protect customers.

Multiple Intervenors is concerned that the introduction of the Phase 2 project costs will materially raise energy rates and bills for utility customers, and this concern strengthens the argument that all such costs should be subject to a rate case (or equivalent) approval process. First and foremost, the sheer magnitude of the investments proposed in the Report – and the potential of additional capital investments not covered therein – creates the risk of material detrimental impacts to customers should there be any cost overruns. Proposed Phase 2 local transmission alone is projected to cost $7.6 billion, a sum that does not include any additional projects yet to be

proposed. Moreover, considering that these are order of magnitude estimates, the actual sum is likely much higher. If additional cost containment measures are not going to be adopted for Phase 2 investments, then they must be subject to rate case review and specifically incorporated into any capital budget management procedures adopted therein.

Second, cost overruns could render CLCPA-driven projects cost-ineffective under the proposed BCA. The BCA, as discussed above, compares the benefits of a project against the revenue requirement impact. (*Id.* at 34.) Cost overruns create a situation where a CLCPA-driven project would initially appear cost effective, only to become cost-ineffective by the time customers are required to fund it. Absent sufficient mechanisms to control costs, the BCA would be rendered ineffective and utility customers would bear the burden of those errors. The Utilities should not be accorded a "blank check" to spend on approved capital projects.

Finally, projects submitted for cost recovery outside of the rate case process pose a special concern. Capital budgets and their corresponding downward-only reconciliation mechanisms are approved in the context of all other proposals in a rate plan. Absent the adoption of rate-case like approval processes, approving cost recovery outside of a rate plan could add significant risk to customers, and circumvent the protections afforded by the existing capital budget approval process. While such projects could be moved to base rates when rates are reset, a portion (and perhaps a large portion) of the capital budget would effectively be pre-approved without considering all other capital proposals and their impact on customers. Thus, to the extent that any projects are considered outside a rate case – which should be the exception and not the rule – those projects should be subjected to a review and approval process that is equivalent to a rate case so that the projected spending can be viewed in context and ensure that appropriate customer protections are implemented.

For these foregoing reasons, Multiple Intervenors requests that more robust cost-containment measures be applied to CLCPA-driven projects, and especially those approved outside of the rate case process. The Public Policy Transmission Planning Process provides a framework for cost-containment that could be utilized for CLCPA-driven investments. Under this process, developers submit highly detailed proposals sufficient to allow the NYISO to assess viability and sufficiency.[10] Developers also can submit detailed cost information and a cost cap, allowing the NYISO to assess cost effectiveness and protect customers against cost overruns.[11] Such a process would serve well here, with all CLCPA-driven projects accompanied by detailed cost and design information, as well as a cost cap beyond which customers would not be responsible for all or at least a portion of any cost overruns. In the alternative, the Commission could require that any project that exceeds a final cost estimate by a certain threshold (*e.g.*, 15%) should be subject to an Order to Show Cause requiring the utility to demonstrate the prudence of the expenditure. As noted earlier, customers are already funding billions of dollars in capital investments, and are being asked now to fund billions more. Cost-containment measures are needed to ensure that customers are not overwhelmed by the burden of these investments.

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[10] *E.g.*, New York State Independent System Operator Open Access Transmission Tariff Attachment Y at § 31.4.5.1.1.

[11] *Id.* at § 31.4.5.1.8.

CONCLUSION

For the foregoing reasons, Multiple Intervenors urges the Commission to adopt the recommendations set forth in these Comments.

Dated: January 19, 2021
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Respectfully submitted,

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