

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

Case 15-E-0302 - Proceeding on Motion of the Commission  
to Implement a Large-Scale Renewable  
Program and a Clean Energy Standard

Case 16-E-0270 - Petition of Constellation Energy Nuclear Group  
LLC; R.E. Ginna Nuclear Power Plant, LLC;  
and Nine Mile Point Nuclear Station, LLC to  
Initiate a Proceeding to Establish the Facility  
Costs for the R.E. Ginna and Nine Mile Point  
Nuclear Power Plants.

RESPONSE OF INDEPENDENT POWER PRODUCERS  
OF NEW YORK, INC. TO PETITION FOR REHEARING

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**I. INTRODUCTION**

Pursuant to Section 3.7 of the New York State Public Service Commission's ("Commission") Rules and Regulations and the Secretary's Notice With Respect to Requests for Rehearing and Reconsideration, issued on September 7, 2016, the Independent Power Producers of New York, Inc. ("IPPNY"), a not-for-profit trade association representing the independent power industry in New York State, hereby responds to the petition for rehearing of H.Q. Energy Services (U.S.) Inc. ("HQUS") of the Commission's order issued on August 1, 2016, in the above-captioned cases.<sup>1</sup>

In the August Order, the Commission adopted a Renewable Energy Standard ("RES") requiring that 50% of all electricity used in the State be generated from renewable energy

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<sup>1</sup> Cases 15-E-0302 et al., *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Aug. 1, 2016) ("CES Proceeding" and "August Order," respectively). IPPNY's silence concerning the requests for rehearing and/or clarification filed by other parties to this proceeding should not be considered concurrence therewith.

resources by 2030 (“50 by 30 goal”) as identified in the 2015 State Energy Plan (“RES program”).<sup>2</sup> To achieve the 50 by 30 goal, the Commission ordered all load serving entities (“LSEs”) in the State to serve their retail customers by procuring new “Tier 1” renewable resources, evidenced by the procurement of qualifying renewable energy credits (“RECs”), in specified, annually-increasing proportions of their total loads (the “LSE Procurement Obligation”).<sup>3</sup> The Commission limited the eligibility for Tier 1 participation to renewable resources that came into operation on or after January 1, 2015.<sup>4</sup>

HQUS, the United States subsidiary of the Canadian government-owned Hydro-Québec (“HQ”), requests that the Commission, on rehearing, reverse its long-standing policy extended to the CES Proceeding to limit eligibility for RES program participation to low-impact run-of river hydroelectric facilities with no new storage impoundments (and the incremental production associated with hydroelectric upgrades with no new storage impoundments) and thereby allow existing and new large-scale hydroelectric resources that rely on storage impoundment to participate as Tier 1 resources (*i.e.*, to deem these resources to be renewable resources for the first time under the Renewable Portfolio Standard (“RPS”) and now under the RES and CES).<sup>5</sup> Pointing to HQ’s historic annual import of approximately 7–10 million MWhs of hydropower into New York from Canada, HQUS also requests that the Commission order on rehearing that large-scale hydro generation, including generation relying on impoundment, of any vintage that

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<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.* at 78, 92–93.

<sup>4</sup> *Id.* at 103.

<sup>5</sup> Case 15-E-0302, *supra*, Petition for Rehearing of H.Q. Energy Services (U.S.) Inc. (Aug. 30, 2016) (“HQUS Rehearing Petition”), at 4.

is delivered over new or expanded transmission and/or interconnection facilities be eligible as Tier 1 resources.<sup>6</sup> The Commission should reject HQUS's rehearing request to expand the definition of eligible hydroelectric facilities so that large hydropower facilities owned by the Canadian government will become eligible to participate in New York's RES program given the subsidized nature of this resource and the Commission's long-settled and well-documented policy that only low-impact hydroelectric resources should qualify under the RES and CES as they have qualified under the RPS.

## **II. ARGUMENT**

### **A. Canadian Government-Owned Large-Scale Hydropower Facilities Relying on Impoundments Are Not Renewable Resources under the RPS and Should Remain Ineligible for Participation in the New York State RES Program.**

Section 3.7 of the Commission's rules provides that "[r]ehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination."<sup>7</sup> HQUS has failed to demonstrate that the Commission has committed an error of law or fact in upholding its policy, first adopted in 2004 when it defined the scope of eligible hydroelectric generation under the Renewable Portfolio Standard ("RPS"), that prohibits large-scale hydroelectric facilities with storage impoundments from being eligible to participate in the RES program. HQUS made the same request in its comments in the CES Proceeding, which the Commission correctly denied, and HQUS has not demonstrated any new circumstances that counter the Commission's determination in the August Order regarding

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<sup>6</sup> *Id.*

<sup>7</sup> 16 NYCRR § 3.7.

adverse environmental impacts of storage impoundments that warrant the Commission reversing its decision.

HQUS asserts that the Commission failed to balance the environmental impacts of large-scale resources, including resources with storage impoundments, versus the benefits of these resources.<sup>8</sup> To the contrary, the Commission balanced these considerations in its 2004 RPS Order and reaffirmed its previously determined balance continued to produce a reasonable result in its August Order.<sup>9</sup> The Commission eliminated the size limitation on run-of-the river hydroelectric resources but found that, to the extent anything changed since 2004 with respect to resources relying on storage impoundments, the Commission's decision barring such resources from eligibility under the RES program has even greater support.<sup>10</sup> The Commission stated in its August Order that the issue of whether hydroelectric resources relying on impoundments should be eligible for RPS incentives "was extensively debated" and its decision excluding such resources from eligibility "remains reasonable."<sup>11</sup> To support its conclusion, the Commission pointed to the fact that, "to the extent any factor has changed since the RPS Order, it is an increasing awareness of the climate change impacts of methane and concern over methane releases from large hydro impoundments, particularly new ones in which flooded vegetation would be decomposing and releasing methane."<sup>12</sup> The Commission's conclusion is further supported by its findings in the CES Proceeding concerning hydropower projects set forth in its

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<sup>8</sup> HQUS Rehearing Petition at 12.

<sup>9</sup> August Order at 105–06.

<sup>10</sup> *Id.* at 106.

<sup>11</sup> *Id.* at 105–106.

<sup>12</sup> *Id.* at 106.

Draft Supplemental Environmental Impact Statement that “conventional store-and-release hydropower projects have prominent environmental impacts on river systems and the plants and animals that are connected to and rely on river systems,” and “[h]ydropower today is more focused on opportunities to develop new sources of energy that do not require the construction of new dams or projects that result in significant alteration of rivers and streams.”<sup>13</sup>

The Commission’s decision to limit eligibility to low-impact hydroelectric resources has been widely adopted by other states in their implementation of renewable portfolio standards. Like New York, most states have recognized the adverse environmental impacts of large-scale hydroelectric resources and have limited eligibility in RPS-type programs to low-impact run-of-river facilities. As IPPNY discussed in its August 12, 2015 comments in this case, one way to aid additional responsible hydroelectric development in New York State is to permit participation in the RES program by privately owned in-State hydro assets, regardless of vintage, that are smaller scale run-of-river resources, which often have been deemed low-impact by an independent entity. No rational basis has been demonstrated to justify the Commission’s reversal of its long-standing policy, particularly to accommodate subsidized Canadian government-owned hydropower and the costly and extensive new transmission facilities necessary to deliver that power to statewide load centers.

HQUS’s request that the Commission order, on rehearing, that large-scale hydro generation, including generation relying on impoundment, of any vintage that is delivered over new or expanded transmission lines from adjacent control areas be eligible as Tier 1 resources is a thinly veiled attempt to secure participation for HQUS utilizing Transmission Developer Inc.’s

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<sup>13</sup> Case 15-E-0302, *supra*, Draft Supplemental Environmental Impact Statement (Feb. 23, 2016), at 5-42.

(“TDI”) proposed 1,000 MW Champlain Hudson Power Express (“CHPE”) transmission project. IPPNY has consistently opposed the Commission adopting policies that would permit subsidized Canadian hydroelectric plant projects or that would result in “socialized” transmission facilities impacting New York’s competitive electricity markets.<sup>14</sup> Markets only work effectively when participants in those markets operate on an equal footing. Permitting socialized, government-owned resources to “compete” in the RES program significantly skews the playing field, disadvantages private, competitive merchant projects, and adversely affects the underlying competitive markets.

### III. CONCLUSION

For the reasons discussed above, the Commission should deny HQUS’s request for rehearing of the August Order.

Respectfully submitted,

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<sup>14</sup> See, e.g., Case 10-T-0139, *Champlain Power Express, Inc.*, Initial Brief of IPPNY (Apr. 22, 2012), at 52–54.