

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of Offshore Wind Energy

Case 18-E-0071

**COMMENTS OF MULTIPLE INTERVENORS
IN OPPOSITION TO THE DIRECT SUBSIDIZATION OF
OFFSHORE WIND ENERGY BY CAPTIVE CUSTOMERS**

Dated: June 4, 2018

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PRELIMINARY STATEMENT

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 in response to the Notice Soliciting Comments (“Notice”) issued by the New York State Public Service Commission (“Commission”) on April 11, 2018 in Case 18-E-0071, *In the Matter of Offshore Wind Energy*.

For the reasons set forth herein, Multiple Intervenors is opposed to proposals that would force captive customers to subsidize offshore wind (“OSW”) generation facilities that, by all accounts, are projected to cost much more than other forms of renewable generation – such as land-based wind generation and large-scale solar generation – that customers already are being required to subsidize as part of the Clean Energy Standard (“CES”).¹ From Multiple Intervenors’ perspective, it makes little sense for the Commission to favor one renewable generation technology over others, or to force overburdened customers to pay multiples more for the same carbon-free electric generation attributes.²

¹ See generally 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) (hereinafter, the “CES Order”).

² Multiple Intervenors’ positions in this proceeding should not be construed as it opposing OSW as a generation technology, or renewable generation of any form. Rather, Multiple Intervenors’ concerns herein are focused on proposals that would force customers to subsidize OSW development at costs well into the billions of dollars and for decades, with such subsidies reflecting very-large price premiums over and above the cost of subsidizing other forms of non-carbon-emitting renewable generation. Many of the Commission’s policy initiatives have large and recurring cost impacts on customers, and it does not appear that the collective impacts of those initiatives are being considered adequately. Even if, *arguendo*, the costs of individual initiatives can be justified in isolation, at some point the collective cost impacts simply are too great, notwithstanding the best of intentions.

As part of the CES, the Commission declined to establish a separate renewable tier solely for OSW, noting that OSW still is an evolving technology and that efforts were being undertaken by the New York State Energy Research and Development Authority (“NYSERDA”) to evaluate possible future OSW development.³ In fact, the Commission recognized, appropriately, that it would be preferable for all forms of renewable technology to compete on a level playing field:

Tier 1 [of the CES] is for procurement of new renewable resources of all types beginning commercial operation on or after January 1, 2015. The use of multiple tiers would reduce the competition within tiers that is necessary to achieve lower long-term costs. Although numerous parties propose separate tiers for preferred types of new resources, it is more effective to allow all new resources to compete directly with each other.⁴

Thus, the Commission already has concluded, properly, that competition between renewable generation technologies would be “more effective” and “achieve lower long-term costs.” Now, however, the Commission apparently is considering doing the exact opposite – establishing a separate CES tier solely for OSW, apparently because OSW currently is unable to compete economically with other forms of renewable generation and, consequently, requires increased customer-funded subsidies.⁵ On January 29, 2018, NYSERDA submitted an *Offshore Wind Policy Options Paper* (“Options Paper”) to the Commission in this proceeding. The Options Paper is one part of New York’s *Offshore Wind Master Plan*, which is a much-broader document. According to NYSERDA, the Options Paper “provides an assessment of alternatives

³ CES Order at 103.

⁴ *Id.*

⁵ If OSW were able to compete economically with other forms of renewable generation, there presumably would be no need for the Commission to consider proposals to accord the technology special treatment at customer expense.

for addressing a wide range of policy issues pertinent to the successful deployment of offshore wind energy within the context of Governor Cuomo’s goal of obtaining 50 percent of New York’s electricity from renewable sources by 2030 (50 by 30 target).”⁶ Specifically, the Options Paper examines issues related to establishing a path to achieve a goal of 2,400 MW of OSW energy generation by 2030.⁷

The Options Paper contemplates a phased approach to OSW development wherein Phase I would be an “initial, transitional approach” until OSW is ready to be mainstreamed into the CES procurements, or alternate approaches to support the development of OSW emerge.⁸ Phase I would be comprised of procurements in both 2018 and 2019, each for at least 400 MW, or a total of 800 MW. During the Phase II procurement process, NYSERDA expects that transmission and interconnection (“T&I”) procurement options would increase as the availability of lease sites expands to include the evaluation of the feasibility of a T&I “backbone” that potentially could serve additional, future OSW projects. As NYSERDA notes, the wind energy areas presently “available to compete for a New York offshore wind procurement during Phase I are limited, dispersed, and not readily expandable.”⁹

⁶ NYSERDA, Offshore Wind Options Paper (dated January 29, 2018) (hereinafter, the “Options Paper”) at 4.

⁷ It appears that the goal of 2,400 MW of OSW generation serving New York by 2030 was proclaimed prior to the completion of a rigorous evaluation of the incremental costs associated with achieving such goal. Multiple Intervenors assumes that this goal remains subject to modification were the Commission to conclude that the costs of OSW simply are too high, and that the goal will not be pursued irrespective of cost impacts. Indeed, one of the fundamental obligations of the Commission is to ensure, for the benefit of customers, that rates and charges are at all times just and reasonable. *See, e.g.*, N.Y. Pub. Serv. Law § 65(1).

⁸ Options Paper at 24.

⁹ Options Paper at 55.

The Commission's Notice solicits comments from interested parties on the proposals set forth in NYSERDA's Options Paper, as well as additional options for consideration in the procurement process, such as bid scoring, potential contract requirements, and alternate development structures. Interestingly, as addressed, *infra*, certain OSW development structures analyzed in the Options Paper are not referenced in the Notice.

Multiple Intervenors is extremely concerned about the potential cost impacts of mandated, customer-funded subsidies of the magnitude needed to ensure desired level of OSW development. As addressed herein, customers already are "on the hook" to fund numerous State and Commission initiatives, and the cumulative impacts of such obligations already are significant and likely will increase annually well into the future. Moreover, the OSW subsidies being contemplated here not only are significant in terms of dollars, but also duration, as there are proposals that would subject an entire generation of customers to a new subsidy program reliant upon 25-year financial commitments to individual projects. Furthermore, similar to many other policy initiatives, OSW subsidies are proposed to be recovered from customers on a purely volumetric (*i.e.*, per kWh or MWh) basis, thereby disproportionately burdening high-load-factor, energy-intensive businesses and industries. Many of these businesses operate facilities in other states and countries. Energy-related costs that are imposed only and/or disproportionately in New York have the effect of making the State less competitive vis-à-vis other regions when it comes to production, employment and capital investment decisions.

Multiple Intervenors urges the Commission to reject forcing captive customers to subsidize OSW, in addition to funding all of the other ongoing policy initiatives. The remainder of Multiple Intervenors' Comments advance the following positions:

1. the potential costs impacts associated with OSW subsidization must be evaluated comprehensively and in the context of all of the other policy initiatives that customers already are being required to fund;
2. the cost impact analyses in the Options Paper are flawed and potentially misleading;
3. at a minimum, OSW projects should compete on a level playing field with all other renewable generation technologies;
4. if OSW subsidization is pursued, the development structure employed should seek to minimize costs and risks to customers;
5. if OSW subsidization is pursued, it is premature to eliminate any particular development structure, and the evaluation of proposals should focus exclusively on cost minimization to customers; and
6. the allocation of costs associated with OSW subsidization advanced in the Options Paper should be rejected.

ARGUMENT

POINT I

THE POTENTIAL COST IMPACTS ASSOCIATED WITH OSW SUBSIDIZATION MUST BE EVALUATED COMPREHENSIVELY AND IN THE CONTEXT OF ALL OF THE OTHER POLICY INITIATIVES THAT CUSTOMERS ALREADY ARE BEING REQUIRED TO FUND

Pursuant to the State's policy objectives under the Reforming the Energy Vision ("REV") and CES initiatives, customers now are required to fund and/or subsidize a myriad of discretionary programs that, while well intentioned, are not essential to the provision of safe and reliable utility service. In addition to the costs associated with actual electricity supply and

delivery service, customers are forced to pay billions of dollars annually towards a number of other State initiatives. Accordingly, it would be inappropriate to consider in isolation the cost to customers of potentially subsidizing the development of OSW in the billions of dollars for a generation, or longer. Instead, the projected and the potential costs of OSW subsidies must be evaluated comprehensively with the costs of all of the other policy initiatives that customers already are required to fund.¹⁰

It is important to remember that at this time, the State is benefitting substantially from historically-low natural gas prices. When those prices rebound, the economic impacts of the decisions being made today through initiatives like REV and CES – which involve long-term financial commitments and risks being imposed on and/or shifted to customers – likely will have severe economic consequences. Thus, Multiple Intervenors is extremely concerned that New York’s energy prices will become massively non-competitive, resulting in significant reductions in economic activity, employment and capital investments in the State, particularly in the already-overburdened manufacturing sector and other energy-intensive enterprises.

To place things into perspective, customers currently are – or may in the future be – forced to fund and/or subsidize the following Commission and/or State policy initiatives, many of which have existing and/or potential price tags well into the billions of dollars:

- the Clean Energy Fund

¹⁰ The projected costs of OSW subsidies are not the same as the potential costs. As the Commission is well aware, long-term projections of future energy costs always are wrong, sometimes by a modest amount and sometimes by a very-large amount. To the extent the Commission desires to move forward with mandating the execution of long-term commitments in furtherance of OSW development for which customers ultimately would be responsible, not only should the projected costs of such commitments be analyzed thoroughly, so, too, should the potential costs in the event that the projections upon which such decisions are based prove to be inaccurate (as they invariably will be in one direction or the other).

- Renewable Portfolio Standard (“RPS”) contracts still in effect to subsidize existing renewable generation facilities
- Renewable Energy Credits (“RECs”) to subsidize renewable generation facilities through the CES in increasing magnitude
- CES Tier 2 maintenance payments to subsidize existing renewable generation facilities that, despite the benefit of long-term subsidy contracts under the RPS, require additional customer funds to remain in operation
- Zero Emission Credits to subsidize many of the State’s nuclear generation facilities through the CES
- utility-administered energy efficiency programs in increasing magnitude
- above-market compensation paid to distributed energy resources in compliance with Commission orders in Case 15-E-0751¹¹
- Earnings Adjustment Mechanisms paid to utility shareholders over and above their Commission-approved revenue requirements
- carbon pricing (currently under consideration)¹²
- new energy storage requirements (reportedly under development)

In analyzing OSW development and the issues in this proceeding, the Commission should focus primarily, if not exclusively, on the best economic interests of electric customers, who already are burdened financially by being forced to fund and/or subsidize the above policy

¹¹ See generally Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources*.

¹² See generally Matter 17-01821, *In the Matter of Carbon Pricing in New York Wholesale Markets*. In addition to Commission Matter 17-01821, carbon pricing currently is being considered in the New York Independent System Operator, Inc. stakeholder process.

initiatives. Indeed, for many large non-residential customers, the cost of various policy-related surcharges often exceed the cost of traditional electric delivery service from the utility. Moreover, the analysis needs to be transparent and fair – apparently the anticipated costs set forth by NYSERDA associated with subsidization of OSW development do not include any land-based T&I costs. These costs easily could run well into the hundreds of millions of dollars annually, and tens of billions of dollars over time.

Moreover, in addition to the aforementioned policy initiatives that are or would be funded by customers, any evaluation of the projected and potential costs of OSW subsidization also should account for delivery rate increases being awarded to the State’s electric utilities. In recent rate proceedings, Multiple Intervenors has witnessed very large proposed delivery rate increases, which purportedly are necessary to fund not only necessary capital projects and the operation and maintenance of existing infrastructure, but also various discretionary investments, such as pilot programs and advanced metering infrastructure proposals, all of which impose even more incremental costs on customers.

It is vital that the aggregate price and rate impacts of the Commission’s various initiatives and delivery rate increases on customers be considered comprehensively when evaluating proposals to impose incremental costs in the billions of dollars on customers in furtherance of yet another discretionary policy initiative. Multiple Intervenors is very concerned that if and when there are additional cost pressures on customers – such as a rebounding of historically-low natural gas prices (which also would cause wholesale electricity prices to rise materially) – jobs will be lost because the Commission already may have burdened customers with inextricable, long-term financial commitments for OSW, among other things.

For the foregoing reasons, the incremental costs of subsidizing OSW should not be evaluated in a vacuum. Rather, Multiple Intervenors urges the Commission to fully and fairly evaluate the possible forced subsidization of OSW by customers in the context of its other policy initiatives and the current and likely future costs thereof on customers. Based on such evaluation, the Commission should refrain from pursuing subsidized OSW at this time. At a minimum, the Commission should direct that additional cost and customer impact analyses be undertaken before approving new financial obligations that would impose incremental financial commitments in the billions of dollars on the State's already-burdened electric customers.

POINT II

THE OSW COST IMPACT ANALYSES ADVANCED IN THE OPTIONS PAPER ARE FLAWED AND/OR POTENTIALLY MISLEADING

Multiple Intervenors has several concerns regarding the OSW cost impact analyses advanced in the Options Paper. For the reasons set forth below, those analyses are flawed and/or potentially misleading in several respects.

A. The Methodology Employed for Analyzing Costs Inaccurately and/or Improperly Attempts to Understate Customer Impacts

In the Options Paper, NYSERDA concludes that the choice of procurement approach for OSW deployment has a direct and "critical" impact on the consequential cost to customers.¹³ Additionally, OSW program costs hinge on key factors, both within (*e.g.*, procurement structure and siting) and outside (*e.g.*, wholesale energy prices and financing costs) the control of the State and the Commission. Therefore, the cost analyses performed by

¹³ Options Paper at 5.

NYSERDA necessarily reflect certain scenarios and assumptions,¹⁴ the accuracy of which are unknown at this time and warrant further sensitivity analysis. Significantly, the figures and assumptions used by NYSERDA in its cost analyses were not provided in the Options Paper.

Phase I

For Phase I, NYSERDA's cost analysis focuses on incremental program costs as the primary cost indicator. NYSERDA defines incremental program costs as the "incremental revenue, on top of energy, capacity and Tier 1 REC premiums, that would allow offshore wind generators to reach their cost of capital. The costs are provided as a net present value (NPV) of incremental [performance based incentive] PBI payments over time on top of the projected value of Tier 1 RECs."¹⁵ NYSERDA also defines electricity bill impacts as "program costs in 2025, the last year of Phase I deployment, in real dollars, divided by the most recently reported (2016) total statewide electricity bill spend."¹⁶ Both of these impact measures are flawed.

First, by analyzing only the incremental revenue above current Tier 1 REC premiums needed by OSW developers to make a project economic, the Options Paper appears to go to great lengths to minimize the magnitude of the total financial subsidies under consideration. For instance, if, hypothetically, wholesale energy prices are \$35 per MWh and Tier 1 REC premiums under the CES are \$20 per MWh and an additional \$50 per MWh in financial subsidies are needed to develop OSW, then the Options Paper is reflecting the total cost of OSW as \$50 per MWh, thereby essentially ignoring the fact that the OSW subsidy needed is on top of the separate

¹⁴ Options Paper at 61.

¹⁵ Options Paper at 96.

¹⁶ *Id.*

economic subsidy required for other forms of renewable generation. Thus, in this example, the above-market costs that customers would be forced to bear for OSW generation would be \$70 per MWh (\$20 per MWh for CES Tier 1 renewable generation and an additional \$50 per MWh for OSW generation). Based on the manner in which the costs of OSW are presented in the Options Paper, it may not be clear to the Commission and/or other entities that, under the various proposals advanced, the potential cost of OSW generation to customers may be several multiples of existing wholesale energy prices. If the Commission is going to force customers to pay more than double or triple for OSW generation versus prevailing market prices, it should explicitly embrace the full impact of its decision and provide an explanation and justification for incremental cost obligations of that magnitude.

Second, again in an apparent effort to minimize or understate the incremental cost of OSW subsidies to customers, the Options Paper relies upon questionable assumptions. For instance, according to the NYISO, the 2017 average wholesale cost of energy in New York State was \$36.56/MWh.¹⁷ When comparing the 2017 average LBMP to the levelized cost of energy (“LCOE”) provided by NYSERDA in Figure 13 for OSW, the total program costs for the various procurement proposals range from approximately \$105-\$155 per MWh, which under certain circumstances are ***more than four times the average cost of energy*** that customers paid in 2017.¹⁸ Even if one were to factor in the 2017 Tier 1 average REC sale price of \$21.71/MWh to the 2017 average LBMP, this results in a \$58.27/MWh cost for renewable generation versus a \$105-\$155 per MWh projected cost for OSW procurement. However, in that Figure 13, energy costs are

¹⁷ See NYISO Monthly Report, January 2018, Attachment A, available at: https://www.nyiso.com/public/webdocs/markets_operations/documents/Studies_and_Reports/Reports/Monthly_Reports/2018/Board-Monthly-Report-January-2018.pdf.

¹⁸ Options Paper at 64.

portrayed as ranging from \$70 to \$72 per MWh. The use of such inflated market-based energy cost projections is very questionable and understates the magnitude of the customer-funded subsidy that likely would be required to ensure OSW revenues in the projected \$105-\$155 per MWh range.¹⁹

Third, the incremental Phase I impacts are misleading because they are provided on a total bill basis, which artificially minimizes the substantial subsidies that would be required of customers over and above wholesale energy prices. The subsidies under consideration are for energy generated by OSW facilities, and are proposed to be recovered from customers through commodity charges. Such subsidies have nothing to do with delivery service nor the cost thereof. However, by including unrelated delivery costs in the projected impacts, the Options Paper attempts to portray a lower percentage impact to customers. A simple example illustrates this concern. Assume that for a hypothetical residential customer, energy supply costs are 4 cents per kWh and delivery costs are 8 cents per kWh. Now assume that such customer is required to pay 4 cents per kWh to subsidize OSW generation. Under this simple example, the cost of the OSW subsidy has the effect of doubling the customer's cost of supply – an increase of 100%. However, by including delivery costs in this calculation, the Options Paper portrays the impact – using these hypothetical figures – as only a 33.3% increase (4 cents per kWh on top of a total supply plus delivery cost of 12 cents per kWh). In this context, including unrelated delivery costs in the impact

¹⁹ Interestingly, NYSERDA's LCOE assumption essentially is that the wholesale cost of energy will more than double over the next six years, while the cost of a CES Tier 1 REC will increase by approximately \$6, or less than one-third. It is not clear how these assumptions were developed. Indeed, wholesale energy prices have declined materially in the last six years – due primarily to the low cost of natural gas. Therefore, if wholesale energy costs do not double over the next six years, as assumed, the subsidies that would be required from customers to fund OSW could be much greater than what is being projected in the Options Paper.

analysis dilutes the true percentage impacts to customers because the contemplated OSW subsidies are spread over the cost of an entire bill including completely-unrelated delivery costs.

In Figure 13 of the Options Paper, the cost of various OSW development structures results in total prices of approximately \$105 per MWh to approximately \$155 per MWh.²⁰ In evaluating those prices, the Commission should recognize that, in 2017, wholesale energy prices averaged \$36.56/MWh. Currently, the State is long in terms of installed generation capacity and is expected to remain so for quite some time. Thus, additional generation capacity is not needed at this time in order to ensure safe and reliable service. The Commission must consider carefully whether customers should be forced to subsidize OSW when the projected level of revenues needed to develop such technology is estimated to be approximately triple – if not more – than the State’s current average price of energy.²¹

For the foregoing reasons, Multiple Intervenors contends that the cost impact analysis for Phase I contained in the Options Paper is inaccurate and/or misleading as to the true projected cost of OSW and how such cost compares to current wholesale energy prices.

Long-Term Cost Indicators

With respect to a longer-term analysis that provides cost indicators for 2024 through 2030 for each procurement option, NYSERDA changes its cost impact methodology and

²⁰ Options Paper at 64.

²¹ Recent CES Tier 1 REC prices have averaged a little more than \$20 per MWh. Thus, renewable generation other than OSW is being procured at an approximate \$20 per MWh premium to current wholesale energy prices (basically, a 50 to 60 percent increase to customers over cost of energy from non-renewable generation). Based on the projections contained in the Options Paper, it appears that OSW is massively more expensive than other forms of renewable generation.

instead of incremental impacts, relies on gross and net program costs.²² To obtain gross program costs, NYSERDA added incremental program costs to the projected levelized Tier 1 REC revenue. This figure represents the total premium, above wholesale prices, that OSW projects are projected to require. Net program costs are calculated by comparing gross program costs to the value of avoided carbon. Such carbon benefits are quantified using the claimed “social cost of carbon,” minus the carbon value already reflected in wholesale energy prices as a result of the Regional Greenhouse Gas Initiative. There are several apparent problems with this type of analysis.

First, on an economic basis, netting out the social cost of carbon results in an artificial reduction of the OSW project costs that customers would actually be forced to pay. In other words, notwithstanding claimed environmental benefits, the total out-of-pocket cost of very expensive OSW still would be borne by captive customers. Thus, using carbon benefits as a reduction to project costs masks the full amount of financial subsidies that would be extracted from customers if the Commission decides that OSW should be subsidized irrespective of cost. Thus, the economic costs of this course of action are being understated in the Options Paper.

Second, in assessing the properties of OSW versus alternative forms of renewable generation – e.g., land-based wind generation – there are no incremental carbon benefits that warrant inclusion of the social cost of carbon in calculating the net program cost. In other words, land-based wind generation produces the same carbon-free emission attributes as OSW. The difference, however, is that OSW may be twice the price, or more, of land-based wind generation. If wholesale energy prices are averaging roughly \$35 per MWh, and Tier 1 RECs awarded to renewable technologies such as land-based wind generation are averaging roughly \$20 per MWh,

²² Options Paper at 105. The Options Paper does not provide an explanation as to why a different methodology is employed to evaluate the cost impacts of potentially subsidizing OSW beyond Phase I.

that equates to a total cost to customers for renewable energy of roughly \$55 per MWh. Under such circumstances, why would New York even consider forcing customers to pay between \$105 and \$155 per MWh for the same carbon-free emission attributes? On an economic basis, this initiative makes no sense. Even on an environmental basis, the initiative simply would force customers to pay substantially more for the same carbon-free emission attributes.

Lastly, as a matter of transparency, Multiple Intervenors requests that NYSERDA publish an additional appendix to its Options Paper that provides all of the assumptions and figures that it used in calculating the cost impacts and analyses for all phases on the proposed OSW procurement process.

B. The Options Paper Fails to Consider Land-Based T&I Costs

When developing and activating an OSW generation project, there are at least two phases of T&I infrastructure development that must occur: (a) T&I necessary to deliver the electricity to shore (*i.e.*, “wet transmission”); and (b) T&I necessary to transmit and distribute the electricity from the shore to customers. Upon information and belief, the State’s electric utilities currently lack the infrastructure necessary to accept, transmit and distribute large quantities of electricity from OSW at shorelines. Significantly, however, the analysis of T&I infrastructure contained in the Options Paper is limited to the “wet transmission” associated with OSW projects, which includes the offshore substations and export cable.²³ The failure to consider necessary land-based T&I infrastructure costs in this analysis understates substantially the full costs of OSW that presumably would be imposed on and collected from customers.

²³ Options Paper at 55.

As NYSERDA notes in the Options Paper, the only Wind Energy Areas that currently are available to compete for a Phase I New York offshore wind procurement “are limited, dispersed, and not readily expandable.”²⁴ There is nothing in the Options Paper that would indicate that land-based T&I infrastructure either is not necessary to accept, transmit and distribute OSW generation or that the costs of such infrastructure would not be material. Yet, in evaluating the potential costs of subsidizing OSW, land-based T&I infrastructure costs are omitted.

The Options Paper does not provide any rationale as to why land-based T&I infrastructure costs were omitted from the cost analysis contained therein. It is at least possible that land-based T&I infrastructure costs could be comparable to wet transmission costs depending on the interconnection point. Given the potential magnitude of land-based T&I infrastructure costs, the failure to include them in the cost analyses contained in the Options Paper renders the Paper fatally flawed. Accordingly, Multiple Intervenors requests that the Commission direct NYSERDA to revise the Options Paper to include the projected costs of necessary land-based T&I infrastructure associated with the contemplated development of OSW generation. Such costs are absolutely essential to being able to evaluate the full costs of proposals to force customers to subsidize OSW generation.

²⁴ *Id.*

POINT III

AT A MINIMUM, OSW PROJECTS SHOULD COMPETE ON A LEVEL PLAYING FIELD WITH OTHER RENEWABLE TECHNOLOGIES

One of the primary tenets of REV is to develop rates that will “encourage desired market and policy outcomes including energy efficiency and peak load reduction, improved grid resilience and flexibility, and reduced environmental impacts *in a technology neutral manner*.”²⁵ Similarly, as detailed, *supra*, the Commission concluded previously in the CES proceeding that competition between renewable generation technologies would be “more effective” and “achieve lower long-term costs.” Adoption of a regulatory program that encourages the procurement of electricity from a single renewable technology type – OSW – is blatantly inconsistent with the Commission’s policy goal of technology neutrality. Putting aside the issue of whether and for how long captive customers should continue to be forced to subsidize renewable generation, the rationale for abandoning the sound technology-neutral principle in order to subsidize OSW to a much-greater extent than other forms of emission-free renewable generation has not been provided in this proceeding.

The Options Paper acknowledges that OSW already is eligible for CES Tier 1 RECs.²⁶ If the Commission remains neutral on renewable technologies, then projects utilizing different technologies would (and should) be competing against each other on a level playing field, thereby reducing the price of RECs and the ultimate cost of the CES to customers. If, however,

²⁵ Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, (issued May 19, 2016), p. 111, Appendix A (emphasis added).

²⁶ Options Paper at 12.

the Commission decides to favor a certain renewable technology (*e.g.*, OSW) over all others through much-higher customer-funded subsidies, that only would drive up the cost of achieving CES goals without producing incremental environmental benefits.

The Commission should not endorse a paradigm whereby it picks “winner” and “loser” technologies. Achieving a 50 by 30 target for renewable generation penetration is very aggressive, and expensive, and only should be pursued, if at all, in the most economic manner possible and at the lowest cost to customers. Such procurement should not provide technology-specific out-of-market subsidies, such as OSW RECs, or ORECs, because they would create artificial market signals and increase costs for customers. Multiple Intervenors opposes the proposed establishment of sub-tiers of RECs, such as ORECs, to provide even-higher subsidies to less economic technologies that provide the exact same carbon-free emission attributes.

In the Options Paper, NYSERDA states that an average OSW procurement of approximately 400 MW per year “could fulfill a large portion, and potentially in some years all or nearly all, of the procurement targets established in the CES Order for the RES Tier 1.”²⁷ NYSERDA concludes that as a result of fulfilling the Tier 1 targets expeditiously, market risk may be increased for developing other types of land-based renewable generation.²⁸ Because of this, NYSERDA recommends creating a separate OSW procurement in addition to Tier 1 procurement targets, or to increase the aggregate Tier 1 procurement targets to include OSW.

Thus, what the Options Paper essentially is recommending can be summarized as follows: (a) OSW generation requires much-greater financial subsidies than other forms of renewable generation subsidized under the CES; (b) providing the necessary subsidies to OSW, at

²⁷ Options Paper at 44.

²⁸ *Id.*

customer expense, would distort the “market” for RECs and increase risks to non-OSW renewable developers; (c) the amount of OSW contemplated for future solicitation also may “crowd out” other forms of renewable generation from participation in the CES; and (d) in order to protect subsidized renewable generation from even-more-heavily subsidized OSW generation, the CES Tier 1 procurement targets would require modification. This is a perfect example of what market interference is contagious, and that the implementation of certain subsidies simply beget the need for additional subsidies. As noted in Point I, *supra*, the list of programs subsidized by captive customers is extensive, with price tags in the billions.

The Commission should decline to establish a separate CES tier for OSW generation. Instead, it should require renewable generation projects to compete on a level playing field. Such competition should help to minimize the cost of CES compliance to customers.

POINT IV

OSW PROCUREMENTS SHOULD MINIMIZE RISKS TO CUSTOMERS

Throughout the Options Paper, NYSERDA’s evaluation appears excessively concerned with providing procurement options that minimize risks to OSW developers. Instead, to the extent customer-subsidized OSW generation is pursued, the chosen development structure should seek to minimize costs and risks to captive customers (who might be accorded no choice but to pay more subsidies or leave the State), as opposed to developers (who would be electing voluntarily to participate in any contemplated procurement process and develop any project selected therein).

NYSERDA acknowledges that the OSW market in the United States is nascent, and “it may take several years for the U.S. offshore wind industry to mature sufficiently to realize

comparable costs ... recent U.S. studies show that activities to drive market scale, market visibility, scale economies, construction, operating and financing experience, development of local supply chain, and competition are projected to lead to rapidly falling offshore wind prices in the U.S. as well.”²⁹ The OSW sector faces challenges in addition to cost, such as longer development lead time as compared to other renewable technologies and dependence on the federal government’s offshore wind energy area leasing process as a pre-cursor to development.

Given the nascent nature of the OSW market and the expectation of gradually-falling costs, the most prudent path would be to allow other regions of the country to move forward first with OSW, as opposed to racing to develop what may turn out to be the most-expensive projects in the country. Under a more-cautious approach, New York would be well-positioned to learn from lessons experienced by other states, while waiting for project costs to decline over time. Inasmuch as OSW generation currently is being projected to be much more expensive than other forms of carbon-free renewable generation, there is no compelling need to rush to pay the most.

Multiple Intervenors also reminds the Commission of a prior instance when the State decided to force electric customers to subsidize an environmentally-preferred form of generation (*i.e.*, cogeneration) under the Six-Cent Law. That decision was based on deeply flawed projections of future costs, and its financial consequences on the State’s electricity customers were disastrous and long-term, resulting in tens of billions of dollars in stranded, above-market costs. As Multiple Intervenors has advocated repeatedly in prior proceedings, the Commission should not repeat the mistakes of the past by relying on long-term financial contracts or similar

²⁹ Options Paper at 16.

commitments to subsidize generation facilities, despite or notwithstanding the fact that such facilities may be renewable and environmentally advantageous.

Furthermore, NYSERDA's recommendation to utilize a 25-year contract duration for OSW projects should be rejected. A contract duration of 25 years is too long and apparently is being advanced for the purpose of mitigating risks for developers. Locking into a long-term price now, or soon, when the costs of OSW generation are very high due to the nascent state of the industry, and fixing that financial commitment for an entire generation of customers, makes little economic sense. Neither the Commission nor NYSERDA have reliable projections of future wholesale energy costs and should not place customers at risk of paying for excessive subsidies for a 25-year period. Accordingly, Multiple Intervenors recommends that any subsidies and/or financial commitments authorized herein be limited in duration.

POINT V

BIDDERS SHOULD BE FREE TO STRUCTURE OSW PROCUREMENT RESPONSES IN A MANNER THAT EMPHASIZES MINIMIZING COST IMPACTS TO CUSTOMERS

The Options Paper acknowledges that the “key differentiating factors between procurement options are the extent to which hedging benefits are provided against risks of commodity revenue uncertainty, and the level of involvement of NYSERDA and other organizations, such as utilities.”³⁰ Significantly, the Notice curiously omits the assessment of NYSERDA procurement options that involve Utility-Owned Generation (“UOG”). In its analysis, NYSERDA concluded that the least-cost option to customers was via OSW generation that is

³⁰ Options Paper at 5.

utility-owned.³¹ Notwithstanding the flaws in NYSERDA's cost impact methodology noted in Point II, *supra*, NYSERDA assessed a UOG procurement option as costing between \$0.4 to \$1.4 billion less than all other procurement options.³² Such potential cost differential is material.

Following the Statewide divestiture of utility-owned generation facilities, Multiple Intervenors has long opposed utility proposals to reenter the generation business due to competitive concerns. Notwithstanding its prior positions, if, *arguendo*, the Commission mandates that captive customers be forced to subsidize OSW generation in this proceeding, then Multiple Intervenors recommends that the UOG procurement option not be eliminated summarily. Importantly, such position should not be construed as an endorsement of UOG. Rather, it should be interpreted as a reaction to the enormous, incremental costs to customers under consideration in this proceeding, and Multiple Intervenors' concerns that while avoiding reliance on UOG may be optimal in isolation, the financial impacts to customers associated with the mandatory subsidy of OSW generation may be so great that any development structure capable of moderating costs, even UOG, warrants serious evaluation herein.³³ Accordingly, no option, including the UOG option, should be eliminated at this time.

The Notice goes beyond the parameters included in the Options Paper and proposes certain bid scoring and procurement limitations for Phase I that neglect to focus on cost minimization as the "driver" of project assessment. The Notice proposes a scoring structure that

³¹ Options Paper at 64.

³² *Id.*

³³ If the UOG structure is considered, then an appropriate degree of risk and cost containment must be assumed by the subject utility(ies) in order to ensure that any projected cost minimization relied upon in the procurement process is in fact realized for the benefit of customers.

accords a weight of 70% to price, 25% to economic benefits, and 5% to project viability.³⁴ The Notice also provides that criteria regarding project labor agreements and prevailing wage requirements should be included in the scoring of economic benefits.³⁵

Multiple Intervenors disagrees strongly with these proposals. Initially, project viability should not be accorded a separate score, and economic benefits should not be evaluated separately. All viable proposals should be evaluated entirely on cost (*i.e.*, the magnitude of the financial subsidies required). To the extent any proposal is accepted, it should represent the least-cost option to customers. Neither the Commission nor NYSERDA possess any experience or specific expertise in evaluating the so-called economic benefits of one OSW project proposal versus several other OSW project proposals.³⁶

Finally, the Commission should refrain from requiring developers to commit to using labor agreements or complying with otherwise non-binding wage-related requirements. Such requirements are unnecessary and too prescriptive, especially given that they may increase project costs and, therefore, increase the magnitude of the subsidies that would be imposed on captive customers. Such labor-related requirements were not included under RPS or CES REC

³⁴ Notice at 3.

³⁵ *Id.*

³⁶ If anything, the Commission should recognize that in addition to certain economic benefits that could be claimed associated with the construction and operation of an OSW generation project, there also are real, offsetting economic harms related to increasing electricity costs in New York vis-à-vis other states. For instance, many energy-intensive enterprises, including but not limited to manufacturers, accord substantial weight in production, employment and capital investment decisions on energy costs at various locations. To the extent mandated OSW subsidies further increase energy costs in New York, the Commission must realize that outcome will have material consequences that may offset in full the perceived economic benefits.

procurements, and the Notice fails to provide any basis whatsoever for why such a bid structure would be necessary or desirable here.

Accordingly, if, *arguendo*, the Commission decides to pursue subsidized OSW generation, then: (a) all development structures, including but not limited to UOG, should be considered on an equal footing pending the evaluation of proposals; (b) submitted proposals should be evaluated to ensure their viability and, if such viability is demonstrated, competing proposals should be selected based solely on minimizing costs and risks to customers. Finally, the Commission should refrain from imposing unnecessary labor requirements outside of its expertise on potential bidders, as such requirements may increase costs to customers unnecessarily.

POINT VI

COSTS ASSOCIATED WITH DEVELOPMENT OF OSW PROJECTS SHOULD NOT BE BORNE BY UPSTATE CUSTOMERS

In its analysis of OSW development in New York, NYSERDA assumes that Phase I projects would interconnect to Long Island, and Phase II projects would interconnect to both Long Island and New York City so that after 2030 there would be 1,200 MW of OSW connected to each Zone (Zone J and Zone K).³⁷ In its analysis, NYSERDA does not contemplate interconnecting any OSW project to the Lower Hudson Valley or Upstate regions.

NYSERDA proposes funding OSW projects through a compliance obligation placed on load serving entities similar to the approach used in the CES under Tier 1.³⁸ Accordingly, nearly 50% of the costs of OSW subsidies would be borne by Upstate customers, yet

³⁷ Options Paper at 71.

³⁸ Options Paper at 9.

Upstate customers would receive little to no benefits from OSW generation projects, particularly given the facts that: (a) the Upstate region currently is long on generation; (b) 85% of the generation Upstate already is carbon-free; and (c) all OSW projects are anticipated to interconnect directly into Long Island and/or New York City.³⁹ Thus, NYSERDA's proposal would allocate OSW obligations and costs in a manner that is not commensurate with the benefits received. This is an inequitable and unfair approach. Because OSW generation units would be located Downstate, Upstate regions and businesses will not experience any of the economic benefits that purportedly would occur as a result of such development.⁴⁰

In the alternative, if Upstate customers are required to pay a portion of OSW development costs, a "beneficiaries pay" approach should be utilized – similar to what has been approved by the Commission in other proceedings, such as the public policy transmission process. The Commission's beneficiaries pay approach for allocating costs provides that those that derive the majority of the benefits of a project should bear the costs. The Commission has adopted an approach for public policy transmission projects whereby 75% of project costs are allocated to the economic beneficiaries of the project, while the other 25% of the costs are allocated to all customers on a load-ratio share.⁴¹ Multiple Intervenors submits that if OSW subsidization is to

³⁹ See, e.g., NYISO Press Release, "NYISO Issues Annual Power Trends 2017 Report" (published May 18, 2017) (stating that "[i]n 2016, 85% of electricity generated upstate came from nuclear, hydro and wind resources with no carbon emissions" and "[b]y contrast, nearly 75% of the electricity produced in the downstate region was generated by fossil fuel resources").

⁴⁰ Some may assume that there are environmental benefits associated with OSW such as carbon-free emissions. Significantly, however, those benefits could be achieved via the procurement of non-OSW renewable generation via the CES. Thus, the proposed additional subsidies required to procure OSW have not been shown as likely to produce any incremental environmental benefits.

⁴¹ Case 12-T-0502, *et al.*, *AC Transmission Proceedings*, Order Establishing Modified Procedures for Comparative Evaluation (issued December 16, 2014) at 40-42.

move forward, and some share of the costs are to be allocated to all customers, then this cost allocation approach is more equitable than that proposed by NYSERDA.

Moreover, to the extent customers are forced to subsidize OSW generation, such subsidies should not be allocated to and recovered from customers on a purely energy basis. While the subsidies may be paid on a per MWh basis for administrative reasons, that does not necessarily equate with cost causation or beneficiaries pay principles. If, *arguendo*, the decision is made to require customers to subsidize OSW generation, a separate phase of this proceeding should be initiated to address cost allocation and cost recovery issues. This phase of the proceeding also should consider whether economic development customers, such as NYPA hydropower customers, should be exempted. Multiple Intervenors is very concerned that if the State persists in attempting to recover the costs of virtually every policy initiative on an energy basis – thereby disproportionately burdening the very high-load-factor customers that New York should be striving to retain – the amount of energy-intensive industries and jobs will continue to decline in the State.

Lastly, while NYSERDA's analysis neglects to consider costs and impacts to utility transmission and distribution systems, to the extent individual utilities need to reinforce or upgrade those systems to accommodate OSW generation, 100% of those costs must be borne by the subject utility(ies) and their customers. Requiring customers located in a different service territory to pay the transmission and system upgrade costs associated with a utility that does not serve them would be patently unjust and unreasonable.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to reject proposals that captive customers be forced to subsidize OSW generation projects, above and beyond the cost of CES compliance. If, *arguendo*, the Commission declines to adopt that position, it should, at a minimum, direct that additional cost-related analyses of OSW – both in isolation and in conjunction with other policy initiatives being funded by customers – be undertaken. Additionally, the Commission should adopt Multiple Intervenors' positions with respect to the other issues addressed herein.

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Respectfully submitted,

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