NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

COMMENTS OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

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I. INTRODUCTION

On July 1, 2024, the Department of Public Service and the New York State Energy Research and Development Authority ("NYSERDA") filed the Draft Clean Energy Standard Biennial Review ("Review") with the New York State Public Service Commission ("Commission" or "PSC") in the above-captioned proceeding, which addresses the status of achieving the Climate Leadership and Community Protection Act's ("CLCPA") target of having 70% of electricity generated by renewable energy systems by 2030 ("70 by 30 target") and having the electricity sector be zero-emissions by 2040 ("100 by 40 target").[1] To address the "apparent divergence between the pace of renewable resource development and the State's decarbonization goals," the Review suggests that the Commission should reconsider "whether the state's investor-owned electric utilities should be permitted to develop and own small-, medium-, and large-scale renewable projects in New York, either on their own or in collaboration with other entities, similar to the authorization granted to [the New York Power Authority ("NYPA")] in 2023."[2] The Review seeks input on, among other things, allowing regulated electric utilities in New York to develop and own renewable energy projects, while considering issues, such as: prior utility experience with Distributed Energy Resources ("DERs") and with

[1] Case 15-E-0302, *In the Matter of the Implementation of a Large-Scale Renewable Program*, Draft Clean Energy Standard Biennial Review (July 1, 2024) ("Review").

[2] Review at 74–75.

developing renewable projects outside of the New York Control Area, an analysis into how utility ownership and procurement of renewable energy resources would reduce costs and deliver benefits to ratepayers, particularly low income ratepayers, and the concerns of vertical market power and competitive pressures.[3]

Pursuant to the July 24, 2024, Notice Soliciting Comments, Independent Power Producers of New York, Inc. ("IPPNY") hereby comments on the Review. IPPNY is a not-for-profit trade association representing companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities in the State of New York. IPPNY member companies produce a majority of New York's electricity, utilizing almost every generation technology available today, such as wind, solar, natural gas, oil, hydro, biomass, energy storage, waste-to-energy, and nuclear.

II. DISCUSSION

A. The Commission Should Not Permit Utility Ownership of Renewable Generation.

IPPNY strongly opposes investor-owned utility ("IOU") ownership of renewable generation because the benefits of such ownership, if any, do not outweigh the significant vertical market power concerns and adverse impacts to the State's competitive markets.

Since the inception of the competitive markets in New York, the PSC has applied its policy to prevent IOUs from exercising vertical market power ("VMP Policy"), which has prohibited the State's IOUs from owning generation in New York unless the subject IOU

[3] *Id*. at 76–77.

demonstrated specific facts and circumstances that rebutted the presumption that ownership of generation by an IOU would unacceptably exacerbate the potential for vertical market power.[4]

The Commission should not modify its current VMP Policy as applied to the IOUs because the Commission correctly determined more than two decades ago that the most effective way to allay vertical market power concerns arising from IOU-owned generation is to prohibit it unless the IOU demonstrated it has rebutted the presumption based on the specific facts and circumstances presented. Accordingly, consistent with long-standing Commission policy, the IOUs should continue to be proscribed from owning generation in New York.

IPPNY has been a strong supporter of the VMP Policy, which requires the separation of generation by the IOUs to eliminate the potential that the IOUs could exercise vertical market power to the detriment of wholesale competitive electricity markets and consumers.[5] The Commission's VMP Policy Statement assures energy market participants considering doing business or making further investments in the State that the Commission is committed to protecting the competitiveness of its wholesale electric markets. The VMP Policy Statement discussed the problem with potential vertical market power:

> Vertical market power occurs when an entity that has market power in one stage of the production process leverages that power to gain advantage in a different stage of the production process. A utility with an affiliate owning generation may, in certain circumstances, be able to adversely influence prices in that generator's market to the advantage of the combined operation.[6]

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[4] Cases 96-E-0900 et al., *In the Matter of Orange & Rockland Utilities, Inc.'s Plans for Electric Rate Restructuring Pursuant to Opinion 96-12*, Statement of Policy Regarding Vertical Market Power (July 17, 1998) ("VMP Order"); *id.* at Appendix I ("VMP Policy Statement").

[5] *See, e.g.*, Case 15-E-0302, *supra*, Comments of Independent Power Producers of New York, Inc. (Aug. 12, 2015), at 4–16.

[6] VMP Policy Statement at 1.

The Commission identified the potential for vertical market power in two instances. First, vertical market power could be exercised when an IOU owns generation in its own service territory. The Commission was concerned that the IOU could use its control of the transmission and distribution ("T&D") system to favor its own generation or thwart competition by lowering competitors' revenues, raising their costs or delaying their projects.[7] Second, vertical market power could be exercised when an IOU owns generation that is located on the high side of a transmission constraint.[8] The Commission was concerned that the IOU could use its control of the transmission system to increase constraints and raise the value of its generating assets.

The Commission reiterated the concern in its VMP Policy Statement that, as monopolies, the IOUs were uniquely situated to directly influence market conditions.[9] Likewise, the Commission highlighted the fact that the IOUs alone would possess system information about, *e.g.*, potential upgrades in their service territories, that they could obfuscate thereby allowing them alone to forego action that would benefit consumers in order to benefit their own generation interests, and thus, their shareholders.[10]

From the outset of its move to a retail competitive model, the Commission found that, in a wholesale or retail competitive model, the generation and energy service functions of the IOUs should be separated from their monopoly T&D functions, wherever feasible, to eliminate concerns related to the exercise of vertical market power and best meet the interests of ratepayers.[11] The Commission determined that the IOUs' total divestiture of generation was the

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[7] *Id*.

[8] *Id*.

[9] VMP Order at 5.

[10] *See id*. (noting IOUs could use their T&D monopolies "to act or fail to act so as to increase the profitability of their parent at the expense of ratepayers").

[11] *Id*.

clearest way to allay concerns about their ability to exercise vertical market power and avoid anti-competitive behavior (such as favored treatment of affiliates and cross-subsidies among affiliates in both competitive and monopoly environments).[12] Finding that separating ownership of generation from T&D for IOUs was preferable to relying on regulatory controls and enforcement mechanisms because the latter were incapable of timely identifying and remedying the potential for IOU abuse, the Commission established a rebuttable presumption that separation of these functions was required.[13] The first paragraph of the VMP Policy Statement summarized the Commission's findings in the context of IOU ownership:

> In creating a competitive electric market, the Commission has viewed divestiture as a key means of achieving an environment where the incentives to abuse market power are minimized. Recognizing that vigilant regulatory oversight cannot timely *identify and remedy all abuses*, it is preferable to properly align incentives in the first place.[14]

In addition, the Commission stated that divestiture would help create a larger number of competing generating companies, which would result in a more dynamic market.[15]

The Commission's policy has been implemented with great success. Except in the limited instance of generation associated with addressing the steam system in New York City, the IOUs have divested their generation, the vast majority of new generation has been developed by independent power producers ("IPPs"), and a competitive wholesale electricity market has been operating in New York for more than two decades bringing consumers significant environmental, economic and efficiency gains.

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[12] Cases 94-E-0952 et al., *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion and Order Regarding Competitive Opportunities for Electric Service (May 20, 1996), at 64–65 ("Opinion 96-12").

[13] VMP Policy Statement at 1.

[14] *Id.* (emphasis added.)

[15] Opinion 96-12 at 65.

Since IOUs divested most of their generation more than 20 years ago, the Commission has applied its VMP Policy Statement on a case-by-case basis to evaluate whether, and under which circumstances, a company and its affiliates may be permitted to own both generation and transmission in New York. The Commission should continue to apply its VMP Policy Statement consistent with its precedents to the IOUs and reject any argument that the public interest requires that the Commission weaken or abandon in any way the VMP Policy itself as it applies to the IOUs to accelerate the development of renewable resources. This point directly addresses a topic for which the Commission is seeking feedback (concerns of vertical market power and competitive pressures), as the long-standing benefits to ratepayers would be jeopardized if the Commission were to stray from its current well-considered course.

Recognizing the Commission's long-standing VMP Policy, the Review states that "fostering the swift and efficient buildout of renewables requires addressing several challenges, and utility ownership of generation . . . could enable better coordinated project planning and execution with advantageous access to capital."[16] However, ownership of renewable generation by the IOUs is not necessary to meet the State's 70 by 30 target. NYSERDA has a substantial program to meet this target in a competitive manner. Each time it has issued solicitations under the Clean Energy Standard program, it has received substantial interest and proposed investment offers.[17] Indeed, despite the inflation and supply chain constraints identified in the Review,

[16] Review at 75.

[17] *See 2017 Solicitation*, NYSERDA, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2017-Solicitation; *2018 Solicitation*, NYSERDA, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/RFP-Resources; 2019 *Solicitation*, NYSERDA, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2019-Solicitation-Resources; *2020 Solicitation*, NYSERDA, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2020-Solicitation-Resources; *2021 Solicitation*, NYSERDA, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-

NYSERDA's most recent solicitation contained provisions to address these areas (as indicated below), and the solicitation garnered competitive interest, receiving bids from 38 projects comprising 3.5 gigawatts of capacity.[18] Clearly, NYSERDA is not lacking development opportunities with non-IOUs to meet the 70 by 30 target that would warrant the Commission weakening its VMP Policy Statement.

Furthermore, the causes of divergence between the pace of renewable resource development and the State's decarbonization goals identified in the Review are not due to the developers being private, non-IOU entities. By their very nature, delays caused by global interest rates, inflation, supply chain pressures, and the interconnection process would impact any entity's ability to proceed with project development. NYSERDA has already begun to modify its solicitations to address some of the causes of delay identified in the Review. In NYSERDA's most recent solicitation, RESRFP24-1, proposers may submit an Alternate Bid Proposal with a price structure where the Index Renewable Energy Credit ("REC") Strike Price or Fixed REC Price would be subject to a one-time adjustment to reflect changes in a pre-determined price index.[19]

B. The Commission Should Not Disturb the State's Competitive Markets.

In addition to vertical market power concerns, there are significant disadvantages to IOU ownership of renewable generation through the disruption of New York's competitive markets. The Commission adopted its policy generally prohibiting IOU ownership to avoid these

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Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2021-Solicitation-Resources; *2022 Solicitation, NYSERDA, available at* https://www.nyserda.ny.gov/All-Programs/Large-Scale-Renewables/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2022-Solicitation-Resources.

[18] *See 2024 RES Solicitation for Tier 1 RECs*, NYSERDA, available at https://www.nyserda.ny.gov/All-Programs/Large-Scale-Renewables/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts.

[19] *Request for Proposals RESRFP24-1*, NYSERDA (July 18, 2024), § 2.6.2, *available at* https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00P8z000004NCL9EAO.

disadvantages as well. In its seminal opinion issued in 1996 to introduce competitive electric markets in New York State, the Commission adopted its policy endorsing, *inter alia*, the creation of a competitive wholesale generation market.[20] In Opinion 96-12, the Commission determined that competitors would have a greater incentive to lower costs than utilities under a cost-of-service regulatory regime, which would inure to the benefit of New York's consumers.[21] The Commission also recognized in Opinion 96-12 that the most efficient means of selecting new resources is via the competitive market.[22] Further, the Commission found that one of the primary benefits of competitive markets is that investment risks shift from captive utility ratepayers to private investors.[23]

The Commission's decision more than two decades ago to restructure New York's energy markets from vertically integrated monopolies to a competitive wholesale and retail market structure was based on the philosophy that competition brings forth efficiencies, technical advancements, savings, and other benefits, which are unlikely to occur as effectively, if at all, absent the motivation provided by such markets.[24] The results that have been obtained since the Commission took this step demonstrate that the Commission's reasoning was sound. This point directly addresses the feedback sought by the Commission about the concerns of competitive pressures, and the Commission should maintain its policy direction to continue providing benefits to ratepayers.

[20] VMP Order at 32.

[21] *Id.* at 30.

[22] *Id*. at 31–32.

[23] *Id*. at 31.

[24] *Id*. at 26.

Many positive benefits have been gained since the market transition, including more efficient operation, substantially increased power plant availability and reliability, and new investment in renewable energy and demand-side programs. Such success has been due, in significant part, to the fact that rules and program designs have been structured carefully, wherever possible, to provide market-based mechanisms that ensure a level playing field for all competitors. Even where incentive payments have been authorized, the program structure was designed to be as compatible with, and to minimize the impact on, the competitive markets to the degree possible. New York consumers have received these benefits without facing any risk of incurring stranded costs as would otherwise have been the case under regulated utility operations.

Competitive electric markets lead to more efficient operations and support lower utility bills for customers, a better climate for companies seeking to do business in the State, and a healthier State economy overall. Generation developers should continue to be required to compete with each other to provide products that benefit consumers and the distribution system at a lower cost than can be provided by IOUs.

If IOUs are allowed to own renewable generation and recover costs via cost-of-service rates, it will not only harm the competitive electric market in the State, but it also will chill merchant entrants' future investment in the State, which would do immense harm to the market. The uneconomic nature of cost-of-service, rate-based generation leads merchant generation and competitive transmission companies interested in developing generation and transmission in this State to dedicate their limited resources elsewhere, thereby harming the competitive market and ultimately consumers.[25] As private investment wanes, more projects will need to be built by the

[25] This fact bears equally on merchant generation and competitive transmission.

monopoly IOUs, which are typically unresponsive to price efficiencies and reluctant to innovate but will nevertheless come to dominate the development of generation and DERs. This point speaks to the Commission's seeking input on prior utility experience with DERs, with additional information provided below.

Competitive markets are harmed by cost-of-service, rate-regulated generation because it can artificially depress the market clearing price from competitive levels. In addition, because renewable resources will be interconnected on the local systems, it will be easier for the IOU to obfuscate when they are favoring their own interests over others, a significant concern raised by the Commission when it implemented the VMP Policy.[26]

As the Commission specifically requested comments on this point, IOU-ownership of renewable energy resources would not "reduce costs and deliver benefits to ratepayers, particularly low-income ratepayers."[27] If IOUs or their affiliates are allowed to acquire or have an interest in cost-of-service, rate-regulated renewable resources, ratepayers ultimately will be put at risk of shouldering the cost overruns of such projects. The Commission allows IOUs the prudent recovery of costs from ratepayers. This recovery mechanism may provide lower financing costs but at great cost and risk to ratepayers. Private IPPs have no ratepayer guaranteed recovery of costs and risk losses on projects that may become uneconomic. IPPs, therefore, have a greater incentive to minimize costs and accurately forecast a project's needed revenues.

Renewable generators earn revenues from, *inter alia*, an Indexed REC. The Index REC and the recently approved Index Storage Credit ("ISC") pay the difference between the

[26] *See* VMP Order at 5–6.

[27] Review at 77.

developers' best estimate of its total net costs of development and operation and the revenues that can be earned from the market.[28] The developer takes the risk that its costs could be greater than its estimate when it makes its bid. One of the purposes of the Index REC payment that IPPs receive is to replace the price of carbon dioxide that is missing in the market. Renewable and energy storage projects need more revenue than what is provided by current market signals. The Index REC and ISC, therefore, are a subsidy for the difference between market revenues and the project's needed revenues.

While the new Requests for Proposals ("RFPs") for Indexed REC contracts contain components for an inflation adjustment and access to Green Bank financing, IPPs must still choose a level of risk they are willing to take to win an RFP. If a generator's estimate of the cost of the strike price (market price plus Index REC) is wrong or if costs go up for inflation, interconnection, or environmental problems, the IPP has no recourse. Ratepayer backing of the Index REC and ISC only is partial. IPPs still must still earn market revenues and accurately estimate the total revenues they need.

However, where IPPs cannot recover cost overruns, IOUs can recover overruns from ratepayers. Indeed, IOUs would have an incentive to under-bid to secure a REC/ISC contract because there is no risk to the IOU if it underestimates its costs or revenues. In contrast, in the case of merchant renewable generation, the developer's shareholders bear the risk of loss, not consumers, and, because IPPs must rely on the market to cover their costs and produce revenue, they are forced to be more efficient.

Thus, IPP developers of renewables and energy storage bear additional risks that an IOU would just pass onto consumers, even after Index REC/ ISC contracts. If IOUs are permitted to

[28] *See* Case 15-E-0302, *supra*, Order Modifying Tier 1 Renewable Procurements (Jan. 16, 2020), at 3.

build and operate projects, the following risks currently borne by IPPs would instead be passed through to captive ratepayers:

- Permitting risk – the developer may need to spend significantly more than it anticipated due to the costs of obtaining permits and paying to mitigate environmental/siting concerns that crop up during the permitting process.
- Interconnection risk – the developer may need to spend significantly more than it anticipated to interconnect its project due to changes on the grid that occur during the interconnection process.
- Location risk – if the developer sites its project in the wrong location, it may be subject to excessive curtailment and reduced LBMPs. This risk concerns the ability of the generator developer to obtain the nodal LBMP prices, and associated revenues, it anticipated when it made its offer to NYSERDA. While the developer's Index REC/ ISC contract with NYSERDA generally protects it from falling market prices, the Index applies to zonal prices, not nodal prices.
- Operating risk – the developer may not properly maintain the project and it may suffer costly outages.
- Construction risk – the developer may not construct the project properly and suffer losses due to costly outages.
- Financing risk – the developer may have misjudged the cost of debt and need to pay significantly higher borrowing costs than it anticipated.

In addition, a benefit of building renewables through IPPs, instead of using cost of service recovery, is that IPPs are subject to a competitive solicitation process that encourages developers to reduce their costs to be competitive. Cost of service regulation has the opposite incentive

because it encourages utilities to increase their costs. The more costly the project, the more profits the utility earns, and the higher the cost to ratepayers.

IOUs have an appearance of a lower cost of capital compared to IPPs largely because of these risk-free guaranteed revenues that would have ratepayers cover cost overruns. As IPPNY demonstrated previously, cost overruns have been a pattern for prior monopoly utility construction projects that were passed through to captive ratepayers. IPPNY provided examples of significant cost overruns for Consolidated Edison Company of New York, Inc.'s ("Con Edison") East River Plant and a Rochester Gas & Electric Corporation ("RG&E") transmission project. While IOUs may have perceived lower financing costs for a given project compared to a private developer, the benefits of that lower financing cost come at the expense of captive ratepayers, who could be required to pay more for an IOU-project than an IPP-owned project because ratepayers bear the risk of cost overruns. In other words, the cost overruns could be so high that they dwarf any benefit of the utilities' lower financing costs.

Con Edison, RG&E, and New York State Electric & Gas Company ("NYSEG") proposed to own solar generation to provide Clean Energy Credits to low-income customers in their recent electric rate cases.[29] All three utilities withdrew their proposals in their respective rate cases. In addition, IOUs have had a backlog of community solar bill credits, resulting in ratepayers not receiving their bill credits from utilities in a timely fashion under existing programs.[30] Community solar serves low-to-moderate income customers and Disadvantaged Communities

[29] S*ee* Cases 22-E-0064 et al., *Proceedings on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Customer Energy Solutions Panel (Jan. 28, 2022), at 52; Cases 22-E-0317 et al., *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service*, Direct Testimony of Innovation, Smartgrids and EV Panel (May 26, 2022), at 25.

[30] *See e.g.,* Case 19-M-0463 et al., *In the Matter of Consolidated Billing for Distributed Energy Resources*, Department of Public Service Staff Proposal on Community Distributed Generation Billing and Crediting Performance Metrics and Negative Revenue Adjustments (Jan. 16, 2024) at 1–2.

("DACs"), yet this program has experienced implementation problems. Rather than giving IOUs more responsibility for serving DACs by developing and owning renewable energy, IOUs should be obligated to improve their existing programs for DACs.

In 2016, the Commission explicitly settled this very question of whether IOUs can own renewable generation in its Order Adopting a Clean Energy Standard, reaffirming as it did with respect to DERs in its REV Track One Order, that it would "rely on markets where feasible, as the best long-run approach to reducing costs and promoting innovation."[31] The Commission rejected the IOUs' attempts then to support their ownership of renewable generation, agreeing with IPPNY's comments and Staff's recommendation that "utility owned generation . . . has the potential to inhibit entry by other market participants, which can result in less competition and higher costs in the long-run."[32] While some parties may claim that IOUs have lower financing costs because utility revenue requirements are largely guaranteed by the Commission, this argument ignores that IOUs will, once again, require ratepayers to shoulder project cost overruns and foist the need to recover a return of, and on, this investment on them.

More recently, the Commission, in 2023, reaffirmed its policy that competition controls the costs of supporting renewable energy generation in its rejection of two petitions by renewable generation developers to modify their NYSERDA contracts. Citing the same effects identified in the Review (permitting delays, supply chain bottlenecks, high inflation, and increases in cost of capital), the petitioners requested that their REC and OREC contracts be amended to allow a onetime adjustment that would significantly increase the price paid for the RECs.[33] The

[31] Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (Aug. 1, 2016) at 102 ("CES Order").

[32] *Id.* at 100.

[33] Case 15-E-0302, *supra*, Order Denying Petitions Seeking to Amend Contracts with Renewable Energy Projects (Oct. 12, 2023), at 1–2.

Commission rejected the petitions, holding that the petitions "do not support departing from the Commission's years-long commitment to competitive procurements as the appropriate mechanism for soliciting RECs and ORECs."[34] The Commission explained that it was not confident that the proposed relief would adequately protect ratepayers and would "result in significant rate impacts unsupported by the discipline of competitive solicitation without providing commensurate assurance that the projects at issue would be developed in a timely and cost-effective fashion."[35] As the Commission's order correctly concluded, "competitive solicitations remain the best mechanism" to establish just and reasonable rates and to meet the CLCPA's targets.[36]

Accordingly, the Commission should reaffirm its policy prohibiting IOU-ownership of renewable generation and not broaden its conservative approach with respect to energy storage projects.

C. The State's IOUs Do Not Have Sufficient Experience in Developing and Constructing Renewable Generation Facilities.

The Review recognizes that IOUs' capabilities in developing and owning renewable energy projects would need to be explored before the Commission acts. In light of the long-standing VMP Policy, the State's IOUs do not have any recent experience in developing or owning generation assets, let alone renewable generation assets, as they have not been able to do so for over 25 years. Conversely, during this period, IPPs have exclusively developed and constructed generation assets. This point speaks directly to the Commission seeking input on the role of prior utility experience.

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[34] *Id*. at 40.

[35] *Id*.

[36] *Id*. at 54.

In apparent recognition of this gap in experience, where IOUs have proposed ownership of generation assets, the IOUs have frequently proposed a model where a third-party entity would develop and construct the project, and then the IOU would take ownership of the asset. For example, as discussed, *supra*, in NYSEG's and RG&E's (collectively, "the Companies") most recent rate case (Case 22-E-0317 et al.), the Companies proposed a program that would allow them to issue competitive solicitations for them to acquire two or more solar generation projects totaling 50 megawatts. Third-party project developers would have been responsible for site acquisition, design, engineering, and construction, and, upon commercial operation, the Companies would have purchased, owned, and operated the projects. Con Edison proposed a similar IOU ownership model in its most recent rate case (Case 22-E-0064 et al.). IPPNY opposed both these programs on the grounds that they did not rebut the presumption established in the VMP Policy Statement. Both proposals were ultimately withdrawn from consideration in their respective rate cases, as not being beneficial to ratepayers.

Accordingly, the IOUs have no recent experience developing utility-scale generation and have often proposed models that avoid their involvement in project development when they have proposed generation ownership programs. Thus, the IOUs do not have any unique capacity to develop renewable generation over IPPs.

IOUs also have limited experience developing smaller-scale DERs compared to IPPs. In its 2015 Order Adopting Regulatory Policy Framework and Implementation Plan, the Commission established that, as a general rule, IOUs will only be permitted to own DERs under four limited circumstances.[37] Nothing has changed since the Order that would require the

[37] Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan (Feb. 26, 2015) at 46. IOU ownership is permitted under the following circumstances: "1) procurement of DER has been solicited to meet a system need, and a utility has demonstrated that competitive alternatives proposed by non-utility parties are clearly inadequate or

Commission to begin allowing IOUs to own DERs beyond the limited circumstances the Commission has already adopted. Moreover, the IOUs experience with DERs is not applicable to the development of utility-scale renewable resources contemplated in the Review. The Review's illustrative path to the CLCPA's 70 by 30 target calls for an additional 5,142 GWh of generation, where an additional 18,753 GWh of offshore wind and 23,520 GWh of Tier 1 generation would be needed.[38] Accordingly, the IOUs' limited experience with DER development does not justify disturbing the competitive DER market and burdening ratepayers with additional costs.

IOUs also do not have direct experience with their rate-regulated New York parent companies "developing renewable projects outside of the New York Control Area."[39] Some examples exist outside of the New York Control Area ("NYCA") wherein utility affiliates and subsidiaries, and not their New York parents, are involved with renewable energy.[40] Rather than that information making the case for IOUs developing and owning renewable energy, the examples point to the potential for affiliates that are structured like IPPs being involved with renewable energy and/or utilities conducting competitive procurements (as discussed further below). The Commission should continue to authorize IOUs to create and organize unregulated corporate affiliates and not change its current, wise policy of not allowing IOUs to develop and

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more costly than a traditional utility infrastructure alternative; 2) a project consists of energy storage integrated into distribution system architecture; 3) a project will enable low or moderate income residential customers to benefit from DER where markets are not likely to satisfy the need; or 4) a project is being sponsored for demonstration purposes." *Id*.

[38] Review at 58, tbl.9.

[39] Review at 76.

[40] *See, e.g., Phase One Overview*, National Grid (last visited Sept. 20, 2024), *available at* https://www.nationalgridus.com/massachusetts-solar/Phase-1/Phase-1-Overview; *Iberdrola in the US: Success and growth in the USA*, Iberdrola (last visited Sept. 20, 2024), *available at* https://www.iberdrola.com/about-us/iberdrola-united-states; *Con Edison Solutions*, Con Edison (last visited Sept. 20, 2024), *available at* https://www.energysage.com/supplier/551/ross-solar-a-conedison-solutions-company/. IPPNY did not locate information about companies related to Fortis being active outside of NYCA in the USA.

own renewable energy. Additionally, a transmission provider in Texas was authorized to deploy mobile generators (the cost for which was passed on to ratepayers) and then failed to deploy them during a hurricane, due to not having experience handling generation facilities.[41]

D. IPPNY Does Not Oppose the Use of Purchase Power Agreements as an Alternative Procurement Structure.

The Review also states that other types of procurement structures that would best suit utility participation in renewable energy development activities should be considered.[42] IPPNY does not oppose a model where IOUs offer IPP-developed renewable generation projects a bundled power purchase agreement. The Commission is requesting input on this topic of procurement of renewable energy resources and how it would reduce costs and deliver benefits to ratepayers.

As noted in the Review, the Commission has recognized that such a model "could provide a project with a strong energy hedge with a creditworthy party and thereby facilitate financing of new renewable generation and increase the likelihood that a contracted project is built."[43] Moreover, the Review states that this model has been utilized with some success in other states, including California, Massachusetts, and Rhode Island. Accordingly, if the Commission determines that utility participation is necessary, it should choose this model because it does not present vertical market power concerns or disturb the competitive market beyond what already is authorized through competitive procurements, with the key point being competition.

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[41] Robert Walton, *CenterPoint cannot cancel $800M lease for large mobile generators unused during Beryl*, Utility Dive (Aug. 16, 2024), *available at* https://www.utilitydive.com/news/centerpoint-leases-mobile-generators-beryl-texas-puc/724441/.

[42] Review at 76.

[43] Review at 75.

E. The Commission Should Expeditiously Identify Eligibility for Zero-Emissions Sources.

IPPNY continues to lead the effort urging the PSC to identify eligibility for zero emission sources to meet the 100 by 40 target reliability, as discussed within IPPNY's comments submitted within the CES case regarding the identification of eligibility of zero emission sources. This effort at the PSC stems from IPPNY's joint petition with the Building & Construction Trades Council and the New York State AFL-CIO (the "Labor Parties") in 2021 that asked the PSC to designate technologies that will qualify as zero emissions sources and to create a market-based program to develop dispatchable emissions free resources ("DEFRs").[44] IPPNY and the Labor Parties each submitted comments that provided proven solutions, while leaving the door open to new technological advancements.[45] IPPNY's consultant, Sargent & Lundy, also participated in a technical conference last December to further discuss the input that IPPNY provided.[46] Earlier this year, IPPNY also provided comments on associated legal topics.[47]

The New York Independent System Operator, Inc. ("NYISO") has released its 2023-2042 System & Resource Outlook. The report finds that, due to the CLCPA, the grid will need about three times the current capacity of the New York generation fleet (between 100 GW and 130 GW by 2042).[48] Of this amount, the NYISO anticipates between 20 GW and 47 GW of DEFRs are needed for the grid to stay reliable and would include resources such as "long-duration batteries,

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[44] *See* Case 15-E-0302, *supra*, Petition for Establishment of a Zero Emissions Energy Systems Program (Oct. 27, 2021).

[45] *See* Case 15-E-0302, *supra*, Comments of Independent Power Producers of New York, Inc. (Aug. 16, 2023); BCTC AFL Zero Emit Comments (Aug. 16, 2023).

[46] *See* Case 15-E-0302, *supra*, David Cohn Opening Statement (Feb. 20, 2024).

[47] *See* Case 15-E-0302, *supra*, Comments of Independent Power Producers of New York, Inc. (Feb. 20, 2024).

[48] *2023-2042 System & Resource Outlook*, New York Independent System Operator Inc. (July 23, 2024), at 10.

small modular nuclear reactors, hydrogen-powered generators, and fuel cells."[49] It also noted that time is of the essence, and that "the research, development, and construction lead times necessary for these technologies may extend beyond the policy mandate timeline, in which case other existing generation technologies may be required to remain in operation to continue to maintain a reliable system."[50] Compared to the NYISO's 2021-2040 System & Resources Outlook, DEFRs are needed for both peak capacity and hourly energy support.[51] The NYISO found that hydrogen is better for addressing peak loads, while small modular nuclear is the best option for supplying base load and support services.[52]

Regarding the 100 by 40 target, the Review states that: "[m]ore fulsome consideration of the path to this goal is ongoing," and it includes nuclear generation as a zero-emission source but does not otherwise substantively discuss the CES Tier 3.[53] Existing upstate nuclear facilities produce 46% of the State's reliable base-load carbon-free electricity and are essential to support the electrification efforts under the CLCPA and the expansion of high load economic development investment.[54] As noted by the Climate Action Council's Scoping Plan, existing nuclear facilities help maintain grid reliability and keep emissions low on the way to achieving

[49] *Id*. at 8, 48.

[50] *Id*. at 9.

[51] *Id*.

[52] *Id*.

[53] Review at 8.

[54] *See 2024 Load & Capacity Data (Goldbook)*, NYISO (Apr. 29, 2024) at 77, *available at* https://www.nyiso.com/documents/20142/2226333/2024-Gold-Book-Public.pdf/170c7717-1e3e-e2fc-0afb-44b75d337ec6.

the CLCPA's targets.[55] The Scoping Plan assumes the upstate nuclear fleet will continue operating and will be granted license extensions.[56]

The Governor's September 5, 2024, "Future Energy Economy Summit" focused upon the need to advance DEFRs, including advanced nuclear technologies, along with renewables to reach the CLCPA's mandates.[57] IPPNY continues to urge the PSC to announce a timeline for the identification of eligibility for zero emissions sources to meet the CLCPA's 100 by 40 target reliably and to establish and approve a competitive program to bring DEFRs online as soon as possible.

F. The Commission Should Expand Eligibility Under the Tier 2 Program.

Attention needs to be given to the retention of the State's renewable energy baseline for which the State claims existing renewable resources as part of the progress towards the 2030 and 2040 targets but provides no compensation. For example, according to the Review, "total contributions to New York from baseline hydroelectric resources have declined 8.2% from 2017-2020."[58] Unfortunately, when examined from 2017 through 2022, the decline in hydro generation is 19.8%,[59] and hydro exports have increased annually since the CES Order in 2017.[60] This erosion is due to absence of programs within the State to support existing renewable resources, whereas several neighboring states and regions have these programs. These programs

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[55] *Scoping Plan*, Climate Action Council (Dec. 2022), at 253–254, *available at* https://climate.ny.gov/-/media/Project/Climate/Files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf.

[56] *Id*. at 256.

[57] *See, e.g., Draft Blueprint for Consideration of Advanced Nuclear Technologies*, NYSERDA (last visited Sept. 20, 2024), *available at* https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/ny/Draft-Blueprint-for-Consideration-of-Advanced-Nuclear-Technologies.pdf.

[58] Review at 78.

[59] *Compare* Case 15-E-0302, *supra*, NYSERDA 2017 CES Progress Report (Feb. 7, 2019), at 15 *with* Case 15-E-0302, *supra*, Clean Energy Standard Annual Progress Report – 2022 Compliance Year (Jan. 31, 2024), at 26.

[60] *CES Baseline Bundled REC Exports*, New York Generation Attribute Tracking System (last visited Sept. 20, 2024), *available at* https://nygats.ny.gov/ng/Report/getdto_view_Report_PublicRenewableCertificateExports.

in other states recognize the contribution of existing renewables, even if they reside in New York, and provide a more favorable market for the RECs from such resources.

The Competitive Tier 2 program, which was intended to reverse this erosion of the renewable energy baseline, was ineffective and has expired, while REC exports have increased. The Competitive Tier 2 program can be revitalized and improved through ways such as: having bid caps account for current Tier 1 pricing and opportunities in other states' programs, and extending contract duration to at least ten years to provide financial certainty for baseline renewable resources to reinvest in their assets.

The Review identifies factors that are slowing new project development and progress towards these targets; however, it does not recognize that existing renewable resources, particularly those without NYSERDA REC contracts, face those same constraints for sustaining the operations of their facilities.

The Review discusses options for which the PSC is seeking comments about "how best to secure the continued operation and deliverability into New York of these [Competitive Tier 2] resources at the least cost to ratepayers."[61] Included are options, such as: providing E-Value (compensation for the environmental benefit of delivered electricity) to small hydro generators (under 5 MW) to recognize the importance of their renewable generation. Although the Review states that the E-Value would be provided "only to those in need of a demonstrated increase in long term income" for a timeframe to be determined by program guidelines based on various factors for these small hydro generators, no demonstration of financial need is required for other

[61] Review at 78.

resource types that currently are eligible for the E-Value. The E-Value should be provided on an equal footing that recognizes the value of attributes in this state, to stem the flow of exports.[62]

On August 29, 2022, IPPNY submitted comments in support of the May 26, 2022 petition before the PSC by interested hydroelectric parties requesting that the PSC expand eligibility for E-Value compensation under the Value of DER tariff to DERs that entered into commercial operation prior to January 1, 2015.[63] The time is ripe for the PSC to act on that petition.

[62] *Id*. at 79.

[63] Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources*, Comments of Independent Power Producers of New York, Inc. (Aug. 29, 2022).

III. CONCLUSION

IPPNY respectfully requests that the Commission reaffirm its long-standing policy disfavoring utility-owned generation and modify the CES program consistent with the recommendations herein.

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