STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS
OF
MULTIPLE INTERVENORS

(I.D. No. PSC-06-20-00014-P)

Dated: May 4, 2020

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PRELIMINARY STATEMENT

Pursuant to the Notice of Proposed Rulemaking published in the February 12, 2020 edition of the *New York State Register* (I.D. No. PSC-06-20-00014-P), Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments to the New York State Public Service Commission ("Commission") in response to the *Petition Regarding Clean Energy Standard Competitive Tier 2 Program for Baseline Renewable Generation* ("Petition"), filed by the New York State Energy Research and Development Authority ("NYSERDA") on January 27, 2020 in Case 15-E-0302.[1]

In the Petition, NYSERDA seeks Commission authorization to establish a new Competitive Tier 2 program as part of the Clean Energy Standard ("CES") initiative. Under this proposed Competitive Tier 2 program, NYSERDA would issue a series of annual competitive procurements for renewable energy certificates ("Tier 2 RECs") from existing renewable resources. This approach differs materially from the existing Tier 2 component of the CES, through which existing generators only are eligible for "maintenance" contracts funded by customers upon a demonstration of financial need. The Tier 2 RECs to be procured through the proposed Competitive Tier 2 program also would differ from the incremental renewable energy credits procured by NYSERDA through Tier 1 of the CES ("Tier 1 RECs"), each of which representing a MWh of generation from a new renewable generation facility. NYSERDA states that the proposal has been developed to "meet the objective of maximizing the contributions and

[1] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*.

potential of New York's existing renewable resources" toward the expanded clean energy goals set forth in the recently-enacted Community Leadership and Climate Protection Act ("CLCPA").

Multiple Intervenors has made clear throughout this proceeding that it is extremely concerned about the cost impacts of the CES, and has urged the Commission on multiple occasions to take care that, in establishing and implementing policies in furtherance of the State's clean energy goals, customers (and, in particular, price-sensitive, energy-intensive customers) are not burdened unduly with excessive and/or unnecessary costs. While such cost-related concerns are present and relevant at all times, they are of extraordinary importance now, as customers of all types throughout the State struggle with, *inter alia*, the economic devastation caused by the COVID-19 pandemic. In other words, perhaps now more than ever, the Commission needs to refrain from imposing new and increased cost obligations on customers.

Based on its evaluation of the Petition, Multiple Intervenors has serious concerns about the proposed Competitive Tier 2 program; specifically: (1) the program would greatly expand the amount of subsidies paid to existing renewable generators in New York, without any consideration of financial need (which is a key requirement for receiving maintenance payments under the existing Tier 2 component of the CES), and could result in a windfall to existing generators; and (2) authorizing $200 million in incremental collections to fund the new Competitive Tier 2 program would place additional financial strains on captive customers, who already are being forced to pay billions toward current and future public policy initiatives.

Given these legitimate concerns, Multiple Intervenors urges the Commission to reject the Petition at this time. Alternatively, in the event that the Commission determines that a Competitive Tier 2 program of some type is warranted, it should direct NYSERDA to fund such a program from existing balances of collected, uncommitted funds, rather than authorizing yet another stream of incremental collections from customers.

BACKGROUND

On August 1, 2016, the Commission issued an Order formally adopting the CES, which set a goal of 50% of generation in New York State to come from renewable sources by 2030.[2] In the CES Order, the Commission, *inter alia*, generally renewed the existing maintenance program under the Renewable Portfolio Standard ("RPS") in a new Tier 2 component of the CES, whereby customer-funded subsidies could be made (via three-year contracts) to select, existing renewable generation facilities such as run-of-river hydropower, wind, or biomass direct combustion facilities if owners of such facilities could demonstrate that, absent financial assistance, they would cease operations.[3] Importantly, under the existing maintenance program, customers only are required to provide financial assistance to a level adequate to allow a facility to recover its future operating costs and any necessary future capital costs, but such assistance need not cover all sunk costs. The Commission's use of three-year maintenance contracts also limited the financial exposure to customers associated with Tier 2.

The Commission subsequently adopted several minor modifications to the Tier 2 framework including, but not limited to: expanding the size of hydropower facilities eligible for a Tier 2 maintenance contract, modifying the vintage and the deliverability requirements for renewable generators to be eligible for Tier 2 subsidies (*i.e.*, expanding eligibility to facilities in operation prior to January 1, 2015, whereas, previously, only facilities in operation prior to 2003 were eligible), and changing the methodology by which NYSERDA calculated the amount of subsidies needed by such facilities. Unlike contracts for Tier 1 RECs (which are solicited on a

[2] Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (issued August 1, 2016) ("CES Order").

[3] *Id.* at 117.

competitive basis), Tier 2 maintenance contracts have been awarded on a case-by-case basis with the focus being on demonstrable financial need.

<u>The Petition</u>

In the Petition, NYSERDA proposes a new Competitive Tier 2 program for existing wind and non-state-owned run-of-river hydropower facilities that appears to have more similarities with Tier 1 than with the existing Tier 2. According to the Petition, the proposed program would run for three years, with generators that submit winning bids to NYSERDA receiving three-year contracts for Tier 2 REC support (thus, the entire proposed program would run up to six years – three years of solicitations, with contracts awarded during that third year expiring after three additional years). (Petition at 4-5.) In order to participate in the Competitive Tier 2 program, eligible wind and hydropower resources must have entered commercial operation prior to January 1, 2015. (*Id.* at 4.)[4] Eligible generators would submit bids with two components: (1) a bid quantity, equal to the annual MWh of generation that the facility would offer to NYSERDA; and (2) a Tier 2 REC bid price ($/MWh). (*Id.* at 5.) All eligible bids would be evaluated on bid price alone, irrespective of any financial need, with contracts awarded based on the lowest bid price. (*Id.*) Similar to existing large-scale renewable solicitations, NYSERDA would calculate a confidential maximum bid price to contain program costs, and would have flexibility to reject some (or all) bids. (*Id.*)

Importantly, NYSERDA also proposes continuing its existing Tier 2 maintenance program for resources that can otherwise demonstrate financial hardship. (*Id.* at 4.) Facilities with active Tier 2 maintenance contracts would not be eligible to bid for a competitive Tier 2 REC

[4] The Petition states that, prior to bidding, generators first would have to apply to NYSERDA for a determination of eligibility to participate in competitive Tier 2 REC solicitations, through a process similar to how projects currently certify their eligibility under CES Tier 1. *See* Petition at 5.

contract, and *vice versa*. (*Id.*) However, eligible facilities with other existing NYSERDA contracts apparently could submit a bid to sell Tier 2 RECs associated with generation output that is not under contract, or which comes off the existing NYSERDA contract. (*Id.*) As an example, according to NYSERDA, an eligible generator that currently sells 10% of its output to NYSERDA through a contract could bid the remaining 90% output under the competitive Tier 2 program (notwithstanding that such generation probably has zero likelihood of being "lost" to New York). (*See id.*, n.12.) Moreover, facilities that participate in a Tier 2 REC solicitation would not be prohibited from obtaining Tier 1 REC eligibility as a result of an upgrade or repowering. (*Id.*)

NYSERDA proposes sizing the Competitive Tier 2 program to "include the majority of eligible generation" and, in each year of the three-year program, it would issue requests for proposals for approximately one-third of that total MWh amount. (*Id.*)[5] NYSERDA also proposes to cap the aggregate funding for the competitive Tier 2 REC program at approximately $200 million over three years. (*Id.* at 6.) NYSERDA further proposes that funding for the Competitive Tier 2 program would be through a new Tier 2 REC obligation imposed on load serving entities ("LSEs"), while administrative costs (approximately $5.5 million over six years) would be covered out of existing, unspent System Benefits Charge ("SBC"), Energy Efficiency Portfolio Standard ("EEPS"), and/or RPS funds. (*Id.* at 8-9.)

As detailed below, Multiple Intervenors has identified a number of significant concerns with the Petition that warrant the Commission rejecting it at this time. First, the proposed Competitive Tier 2 program would likely provide a windfall to existing generators, particularly those that previously received significant customer subsidies, as well as for those for which no demonstrable need for financial assistance has been identified. Second, the costs to customers of

[5] The Petition does not provide a specific MWh figure for the amount of generation NYSERDA actually would solicit under this new program.

a Competitive Tier 2 program would be both substantial and incremental to other costs associated with a myriad of public policy initiatives that customers must bear, which currently is well into the billions of dollars. Alternatively, even if, *arguendo*, the Commission decides to implement a Competitive Tier 2 program, it should direct NYSERDA to fund the costs thereof out of already-collected, unallocated funds, prior to authorizing any incremental collections from customers, especially during this time of economic devastation caused by the COVID-19 pandemic. Customers should not be forced to fund another $200 million or more in incremental costs for existing, previously-subsidized renewable generation facilities for which no financial need has been demonstrated.

COMMENTS

POINT I

NYSERDA'S PROPOSAL FOR A COMPETITIVE TIER 2 PROGRAM WOULD PROVIDE A WINDFALL TO EXISTING GENERATORS

As detailed above, NYSERDA is proposing to implement a new Competitive Tier 2 program whereby certain existing hydropower and wind resources would be allowed to bid for three-year contracts with NYSERDA for Tier 2 RECs, with each Tier 2 REC representing the clean energy attributes of one MWh of generation from such existing resources. For the following reasons, Multiple Intervenors strongly urges the Commission to reject this proposal, as it likely would result in a customer-funded windfall for owners of existing facilities.

Initially, Multiple Intervenors is not opposing here the CLCPA's goals, or reasonable efforts to achieve those goals. Multiple Intervenors, however, is concerned about the implementation of policies that result in excessive and/or unnecessary costs to customers (and, in particular, price-sensitive, energy-intensive customers). Multiple Intervenors notes that it previously raised concerns about Tier 2 of the CES, in the context of possibly providing maintenance subsidies to generators that already were subsidized through long-term RPS contracts. In Multiple intervenors' viewpoint, allowing existing, previously-subsidized generators to be eligible for additional financial support through the CES would amount to windfalls for those generators, at the expense of captive customers.

Pursuant to the RPS, customers were required to pay substantial surcharges to subsidize renewable generation facilities that otherwise would not have been economic, and to do so for lengthy periods of time (*i.e.*, up to ten years or longer). Such subsidies were intended to be temporary, however, and not endure in perpetuity. Indeed, when the Commission first established the RPS in 2004, it recognized the need to promote a sustainable, competitive market for renewables, otherwise its initiative "*could result in an industry that is perpetually dependent upon government-mandated subsidies*."[6] Over 15 years later, the government-mandated subsidies seemingly only have grown in number and magnitude.

The Petition also fails to recognize the purpose and the implementation of subsidies provided under the RPS. The subsidies received thereunder were intended to constitute the full amount of customer-funded financial assistance that would be provided to new renewable generation projects. The owners of those projects were accorded the opportunity to determine the total amount of out-of-market financial assistance required for their projects to be profitable over their projected operating lives, and to bid to recover those amounts over the duration of a long-term contract. No additional, end-of-contract financial assistance from customers was anticipated or should be needed now. In other words, for projects that were awarded RPS contracts, customers

[6] Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) at 12 (emphasis added).

already have funded, fully, the owner's projected "shortfall" between market-based revenues and what would be needed to develop those projects profitably. To now require customers to subsidize those facilities again, after such facilities already have reaped subsidies for the entirety of an RPS contract, is unnecessary, would be inequitable to customers, and also would provide those facilities with a substantial financial windfall.

It bears noting that in the CES Order, the Commission declined to adopt a Staff proposal for a competitive "Tier 2a" structure to subsidize existing (primarily wind) facilities, noting that such facilities already recovered all or most of their initial capital costs (and, therefore, should be profitable even with low energy and capacity prices), and there was no imminent risk of losing their emissions attributes to other states. In apparent recognition that those potential Tier 2a facilities previously received customer-funded subsidies through long-term RPS contracts, the Commission also concluded that there was no need to provide such facilities "with additional New York consumer support" for those emissions attributes.[7]

The Petition does not distinguish between renewable generators that previously received subsidies under long-term RPS contracts, and those existing generators that were not previously subsidized by customers. Rather, the Petition only notes that the Competitive Tier 2 program would not be available to generators with *existing* NYSERDA contracts (including maintenance contracts). Thus, the language of the Petition appears to allow generators that have completed their ten-year RPS contract terms to submit a bid to sell Tier 2 RECs to NYSERDA under a competitive solicitation. In other words, those generators that already were subsidized by customers would be eligible to receive additional payments from customers (incremental to any revenues that they already would receive for their generated electricity through wholesale

[7] *See* CES Order at 116.

markets). In Multiple Intervenors' opinion, this essentially would result in customers paying twice for the same generation, and is inconsistent with the Commission's previous statement from 2004 regarding the need for a sustainable, competitive market for renewables that does not rely on customer subsidies.

At some point, the perceived "need" for customers to continue subsidizing the same facilities year after year must end.[8] Ironically, when the Commission first embraced competition in electric generation, one of the anticipated benefits was that the risk of developing and operating generation, and risks associated with market prices and compensation, would be shifted from utility customers to developers. Under NYSERDA's proposal, however, customers would continue to remain responsible for paying certain renewable generation facilities for their electricity, long after subsidizing their development and operation over an extended period of time under the RPS. Indeed, when these renewable owners and developers first submitted bids for long-term RPS subsidies, they were responsible for determining how much financial assistance would be required (in the form of bids submitted) to ensure that their facilities thereafter would be self-sustaining. It is reasonable to assume that such developers submitted bids reflecting the financial compensation necessary to render proposed projects economic and profitable. Given the substantial financial support provided under the RPS, it is highly objectionable that the same facilities that were built and operated on the backs of captive customers should get another bite at the apple in the form of a new round of financial subsidies.

[8] The Commission never intended customer obligations under the RPS to be indefinite. For example, the Commission stated in 2004 that: "We believe an important objective of the RPS program is to stimulate and complement voluntary/competitive renewable energy sales and purchases (or 'green markets') so that these competitive markets, *not government mandates*, sustain renewable activity *after the RPS program ends*." *Id.* at 4 (emphasis added).

Equally concerning to Multiple Intervenors is that NYSERDA's proposal signals a dramatic shift from the original intention of Tier 2 of the CES – *i.e.*, to provide maintenance payments to existing renewable resources that, absent such financial subsidies, would be at risk of ceasing operations. Instead, under the proposed Competitive Tier 2 program, generators would be eligible for additional payments from NYSERDA irrespective of whether any economic need exists. Thus, already-profitable generators would be able to earn additional revenues, through customer subsidies, for which there is no demonstrable need. Taken one step further, generators that previously received subsidies through 10-year RPS contracts, and now are economically profitable after having been supported by customers for so many years, may now benefit again from new customer subsidies.

Ultimately, NYSERDA's proposal strays too far from the original purpose of Tier 2 of the CES, which is to assist those existing renewable generators that, absent customer subsidies, would be in danger of ceasing operations. The proposal also is highly inequitable for customers who would be forced to bear the costs of the new Competitive Tier 2 program, which could involve customers funding additional subsidies to profitable renewable generators that already have benefitted from ten years of customer-funded subsidies under the RPS.[9]

For the foregoing reasons, Multiple Intervenors urges the Commission to reject NYSERDA's proposal for a Competitive Tier 2 program. Captive customers should not be forced to fund new subsidies for existing renewable generation projects, particularly ones that do not even require such subsidies to remain operational and/or projects that already have benefitted from ten or more years of customer-funded subsidies under the RPS at levels those facilities deemed

[9] In addition to funding the proposed, revised Tier 2 – at an estimated initial cost of $200 million – NYSERDA proposes to retain the existing maintenance program.

sufficient in a competitive procurement process. At some point, the Commission needs to prioritize protecting customers from excessive and unnecessary costs.

POINT II

IMPOSING A NEW, MORE EXPENSIVE, TIER 2 REC OBLIGATION ON LSEs RAISES ADDITIONAL CONCERNS ABOUT COST IMPACTS TO CUSTOMERS

In effectuating State policies, it is critical that the Commission review proposals dependent upon customer funds thoughtfully and carefully, and avoid burdening customers with excessive costs. Multiple Intervenors has advocated repeatedly, but seemingly without effect, that the Commission should not evaluate requests for ever-increasing amounts of customer funds in isolation. Rather, incremental utility spending must be evaluated carefully and comprehensively in the context of all of the policy initiatives that customers already are being forced to fund and may be forced to fund in the future. The existence of new statewide energy goals through the CLCPA, in and of themselves, do not justify indiscriminate spending of customer funds. Rather, the Commission should be acting to ensure that such energy goals can be achieved as cost-effectively as possible, thereby minimizing unnecessary rate and price impacts on customers. This is especially true now, as the nation, and New York State, struggle with the economic devastation caused by the COVID-19 pandemic. Now is NOT the time to be increasing costs to customers.

Here, NYSERDA's proposal to expand the Tier 2 program has an estimated price tag of $200 million over three years. If approved, these costs would layer atop the costs of all of the other public policy-related programs approved by the Commission in recent years, including but not limited to:

- The broader Clean Energy Fund ("CEF"), which already requires customers to pay over $5 billion in utility surcharges to fund customer-sited renewable projects, energy efficiency programs, and market transformation programs, as well as capitalization of the New York Green Bank.

- Tier 1 of the CES which, as discussed above, imposes requirements on LSEs to procure increasing amounts of Tier 1 RECs to provide many billions of dollars in out-of-market compensation to new renewable projects, and which costs are passed through to captive customers.[10]
- Tier 3 of the CES, which obligates LSEs to procure Zero-Emission Credits to provide many billions of dollars in out-of-market compensation to a corporation owning selected nuclear facilities. As with Tier 1 RECs, the costs of Tier 3 also are passed through to customers by commodity suppliers.
- Utility-administered energy efficiency programs of increasing magnitude that are dependent upon hundreds of millions of dollars in customer collections annually, and which the Commission has expanded substantially in recent years.[11]
- Utility-administered heat pump programs that are dependent upon hundreds of millions of dollars in incremental collections from electric customers.[12]

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[10] The Commission recently approved a modification of the Tier 1 REC program to allow developers to submit bids for Tier 1 REC contracts using an "indexed REC" methodology that ties Tier 1 REC payments to fluctuating wholesale market prices. This essentially allows a developer to "lock in" its cost to develop a clean energy facility, and shifts market price risk from developers to customers. *See* Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Modifying Tier 1 Renewable Procurements (issued January 16, 2020).

[11] The Commission recently authorized the New York utilities to spend nearly $2 billion of customer funds on additional energy efficiency investments through 2025. *See* Case 18-M-0084, *In the Matter of a Comprehensive Energy Efficiency Initiative*, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020). Said Order approved incremental efficiency-related collections of $892,782,600 from electric customers and $552,881,879 from gas customers through 2025. *Id.*, Appendix A at 1-3.

[12] *Id.*, Appendix C (authorizing $454,318,200 in spending on heat pump programs).

- The offshore wind initiative, which will obligate LSEs (and by extension, their captive customers) to procure Offshore Wind renewable energy credits to provide at least hundreds of millions of dollars in annual, out-of-market compensation to offshore wind projects.
- The Value of Distributed Energy Resources tariffs, which require non-participating customers to pay out-of-market compensation and incentives to customers with qualifying distributed energy resource projects.
- Earnings Adjustment Mechanisms in individual utility rate cases, which require customers to pay utility shareholders millions of dollars in incentive payments, above and beyond the cost to provide safe and reliable electric and/or gas service, for achieving certain outcomes for which the utility's management may or may not have been directly responsible.
- Revenue Decoupling Mechanisms, which will require customers to pay much-higher costs in the year ahead due to lower-than-projected sales volumes – exacerbated by an abnormally warm winter and then the COVID-19 pandemic – because such mechanisms effectively shift sales volume risk from utility shareholders to customers.

In addition to the foregoing, customers are being called upon to support numerous utility investments related to the Commission's Reforming the Energy Vision ("REV") initiative, including but not limited to: (a) large-scale roll-outs of advanced metering infrastructure; (b) information systems and other investments purportedly necessary to help fulfill utility functions as distributed system platform providers; (c) capital, operating costs and incentives associated with non-wires alternatives and non-pipeline alternatives; (d) REV pilot programs costing many millions of dollars apiece; (e) hundreds of millions of dollars on energy storage projects; and, potentially, (f) hundreds of millions of dollars in new incentives related to electric vehicle charging stations and related infrastructure. Finally, customers may be required to pay higher – potentially much-higher – wholesale electricity prices due to a carbon pricing initiative that currently is under consideration in the stakeholder process of the New York Independent System Operator, Inc. Many of the above initiatives have price tags in the hundreds of millions or billions of dollars on an individual basis, and the aggregated cost obviously is much, much higher.

Given all of these policy-related programs and the associated price tags, it is questionable whether the Commission should authorize yet another program that will cost customers hundreds of millions of dollars more and, as discussed in Point I, *supra*, likely will result in a windfall to existing generators that already received significant customer subsidies. Frustratingly, it often appears that single expense items in utility rate cases costing in the tens of thousands of dollars – while legitimate topics of inquiry – receive much-greater cost-related scrutiny than new policy initiatives like a Competitive Tier 2 program that has a price tag in the hundreds of millions of dollars. Multiple Intervenors notes that utilities bear the burden of justifying their proposed spending during rate case proceedings. As noted above, NYSERDA has not provided any details for why a Competitive Tier 2 program even is needed at this time.

In analyzing the Petition, the Commission should focus, first and foremost, on the best economic interests of customers. Multiple Intervenors is very concerned that, if costs continue to be imposed on customers, the aggregate rate and price impacts of the Commission's collective initiatives will cause energy-intensive businesses to increasingly shift production, capital and jobs to other states and countries, or cease operating. The ability of customers to fund expensive policy initiative after expensive policy initiative, even where well-intentioned, is becoming increasingly limited to non-existent at this point. Here, a proposal to subsidize existing generators (including generators that previously already received significant customer-funded subsidies) without any consideration for financial need already is inequitable to captive customers. When the Competitive Tier 2 program is considered in the context of the billions of dollars in other discretionary spending that the Commission has authorized in recent years, it is clear that these newly-proposed subsidies are not in the best economic interests of customers.

POINT III

IF THE COMMISSION APPROVES A COMPETITIVE TIER 2 PROGRAM, IT FIRST SHOULD BE FUNDED THROUGH COLLECTED BUT UNCOMMITTED COLLECTIONS

As noted in Points I and II, *supra*, the proposed Competitive Tier 2 program would enable previously-subsidized renewable generators, and those generators that are not in financial distress, to receive new customer subsidies. Those new subsidies, in Multiple Intervenors' opinion, would be highly inequitable to captive customers and should be rejected. However, if, *arguendo,* the Commission determines that a Competitive Tier 2 program is warranted and should be implemented, customers would be forced to bear an additional $200 million over three years in payments to existing generators. Customers already are being forced to pay billions of dollars toward the Commission's various public policy initiatives. For some customers (particularly energy-intensive businesses), the collective financial burden of all these cost obligations are making it increasingly difficult to do business in New York State. Imposing an additional $200 million cost over three years on such customers would exacerbate the economic difficulties already faced by such customers, especially as they attempt to recover from a devastating pandemic. To the extent the Commission can mitigate some of the aforementioned cost impacts to customers, it should do so.

Accordingly, Multiple Intervenors respectfully recommends that, if the Commission finds that a Competitive Tier 2 program should be implemented, it should direct NYSERDA to first pay the costs associated with the program using existing balances of already-collected, uncommitted SBC/EEPS/RPS funds, prior to authorizing any incremental collections from customers. Relatedly, if a Competitive Tier 2 program is adopted, Multiple Intervenors supports NYSERDA's proposal that administrative costs associated therewith also be covered through the use of collected, uncommitted SBC/EEPS/RPS funds.

CONCLUSION

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

Dated: May 4, 2020
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Respectfully submitted,

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