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

Dated: August 16, 2023

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments to the New York State Public Service Commission ("Commission") in Case 15-E-0302.[1] Multiple Intervenors' Comments are submitted in response to the Commission's *Order Initiating Process Regarding Zero Emissions Target* ("Order") and *Notice Extending Comment Period*, issued herein on May 18 and June 28, 2023, respectively.

Initially, Multiple Intervenors commends the Commission for instituting this phase of the proceeding focusing on the future need for zero-emission generation facilities to ensure that electric reliability is maintained as the State increases its reliance on intermittent, weather-dependent renewable generation resources in an effort to comply with the Climate Leadership and Community Protection Act ("CLCPA"). For years, Multiple Intervenors has been advancing concerns regarding a possible over-reliance on intermittent forms of generation without an adequate supply of dispatchable generation to ensure continuous reliability. While Multiple Intervenors members are very supportive of reasonable decarbonization efforts in the State's generation sector, the Commission must ensure that reliability and affordability are maintained at all times and for all customer segments.

Multiple Intervenors also commends the Commission for declining to grant, at this time, the petition filed by the Independent Power Producers of New York, Inc., New York State Building and Construction Trades Council, and New York State AFL-CIO seeking

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

establishment of a new tier of the Clean Energy Standard to incentivize/subsidize "zero emissions energy systems" at customer expense ("Petition").[2] In response to the Petition, Multiple Intervenors – and other parties – advanced numerous arguments as to why the requested relief, at best, is premature.[3] While a further exploration herein of the scope, the depth, and the timing of potential future reliability needs and possible solutions thereto is appropriate, Multiple Intervenors continues to contend that any proposed imposition of incremental financial obligations on customers remains premature.

The CLCPA requires that the State's electric grid be emissions free by 2040 (hereinafter, "2040 Target"). Even if, *arguendo*, there is a need for DEFRs in advance of 2040, such need still does not appear imminent, and may be a decade or longer away. Because maintaining – if not improving – electric reliability is critical, Multiple Intervenors supports this inquiry and further analyses as to how much incremental capacity of DEFRs will be needed, as well as when and where within the State such resources should be located.

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[2] In the Order, the Commission notes that the Petition defined "'zero emissions energy systems' as systems, other than renewable energy systems, that generate electricity or thermal energy through the use of technologies that do not lead to a net increase in greenhouse gas emissions into the atmosphere at any time in the process of generating electricity." (*See* Order at 5.) Similarly, the New York Independent System Operator, Inc. ("NYISO") has highlighted repeatedly that compliance with the CLCPA in a manner that does not jeopardize electric reliability will require the future development of large quantities of dispatchable emission-free resources ("DEFRs"). (*See id.* at 11.) While definitional issues will be addressed, *infra*, in response to questions posed in the Order, it is clear that this phase of the proceeding is focused on non-emitting generation resources that are neither highly intermittent nor weather dependent such as solar, land-based wind, and offshore wind technologies.

[3] *See*, *e.g.*, Case 15-E-0302, *supra*, Comments of Multiple Intervenors (dated November 15, 2021) at 5-9. Multiple Intervenors also advocated that if, *arguendo*, the Petition was approved in whole or part: (a) the proposed program to encourage zero emissions energy systems only should be implemented as a pilot program with a hard cap on costs set at a very modest level; (b) the Commission should refrain from relying on incremental customer collections (*i.e.*, repurpose collections authorized elsewhere); and (c) incremental customer collections approved by the Commission, if any, should be allocated and, where possible, recovered on a demand basis consistent with other, reliability-based investments. (*Id.* at 9-19.)

That noted, Multiple Intervenors continues to oppose proposals that customers be burdened financially with a new program to incentivize/subsidize DEFRs. Such a program would be premature, and potentially very costly and impactful if incremental to the many other significant financial burdens already being imposed on customers in furtherance of the CLCPA and similar objectives.[4] As New York State Comptroller Thomas P. Napoli recommended in a recent report: "It will … be important for policymakers charged with implementing the CLCPA

[4] For instance, customers currently are obligated to fund, *inter alia*: (a) billions of dollars in out-of-market payments to new, large-scale renewable generation facilities under Tier 1 of the Clean Energy Standard ("CES"); (b) hundreds of millions of dollars in out-of-market payments to existing renewable generation facilities under CES Tier 2; (c) billions of dollars in out-of-market payments to existing nuclear generation facilities under CES Tier 3; (d) billions of dollars in out-of-market payments for incremental transmission and renewable generation to serve New York City under CES Tier 4; (e) billions of dollars in out-of-market payments for offshore wind generation facilities; (f) approximately $7.5 billion towards the Clean Energy Fund; (g) approximately $1.9 billion towards electric energy efficiency programs through 2025; (h) approximately $900 million towards gas energy efficiency programs through 2025; (i) approximately $450 million for utility-administered electric heat pump programs through 2025; (j) approximately $700 million toward electric vehicle infrastructure investments through 2025 and potentially more thereafter; (k) billions of dollars toward multiple, large-scale transmission projects through the Public Policy Transmission Planning Process implemented by the NYISO intended to improve the deliverability of renewable power; (l) billions of dollars toward utility transmission and distribution projects that are being accelerated, or would not be needed, but for the CLCPA; (m) $112.5 million toward the Electric Generation Facility Cessation Mitigation Program through 2030 and potentially more thereafter; and (n) hundreds of millions of dollars toward positive-only Earnings Adjustment Mechanisms paid to utilities on top of "base" rates. Additionally, customers soon may be obligated to fund, *inter alia*: (a) between an estimated $1 billion and $1.7 billion in incremental out-of-market payments to energy storage facilities; (b) potentially substantially-higher wholesale (and, therefore, retail) electricity and natural gas prices due to the planned implementation of the New York Cap-and-Invest program; (c) potentially up to $5 billion on energy efficiency and electric heat pump programs from 2026-2030; (d) billions of dollars on a new Public Policy Transmission Project identified by the Commission to facilitate the delivery of offshore wind generation into New York City; and (e) potentially billions in higher payments to renewable generation facilities in response to pending petitions seeking costly modifications to existing contracts that ultimately would be borne by customers. Given such staggering financial obligations already being imposed – and under consideration to be imposed – on customers, it is critical that the Commission refrain from adding to existing burdens at this time.

to consider mechanisms to hold down the cost of meeting its goals on the State's electric consumers."[5]

The remainder of Multiple Intervenors' Comments focus on responding to the specific questions posed in the Order.

RESPONSES TO QUESTIONS POSED IN THE ORDER

Within the body of the Order is a *Notice Soliciting Public Comments*, wherein 14 questions are posed to interested parties. Subject to the previously-noted opposition to the adoption of any customer-funded program to incentivize/subsidize DEFRs at this time, Multiple Intervenors hereby presents its responses to those questions in the order listed.

1. How should the term "zero emissions," as used under PSL §66-p(2)(b), be defined?

The term "zero emissions" can be defined in a variety of ways. From Multiple Intervenors' perspective, a key point is that the definition should not seek to limit – or even reference – specific technologies. Among potential zero emission resources, the Commission should not seek to pick "winners" or "losers," nor should it adopt a definition that excludes emerging technologies that may not be contemplated or "favored" at this time. Rather, the definition should focus on the absence of net incremental greenhouse gas emissions associated with the operation of a resource.

Potential proposals to further limit the definition due to other environmental considerations should be rejected at this time; the definition should not go beyond the express language of the CLCPA, nor should it artificially limit the scope of potentially qualifying

[5] New York State Comptroller Thomas P. Napoli, *Renewable Electricity in New York State: Review and Prospects* (dated August 2023) (hereinafter, "Comptroller's Report") at 16.

technologies. Multiple Intervenors is concerned that artificial definitional barriers eventually could (i) make it even more challenging to maintain electric reliability in the future and/or (ii) result in higher compliance costs to customers – both of which should be material concerns for the Commission.

2. Should the term "zero emissions" be construed to include some or all of the following types of resources, such as advanced nuclear (Gen III+ or Gen IV), long-duration storage, green hydrogen, renewable natural gas, carbon capture and sequestration, virtual power plants, distributed energy resources, or demand response resources? What other resource types should be included?

The term "zero emissions" could, and probably should, be construed to include all of the technologies identified in the question for which operation would not result in a net increase in greenhouse gas emissions. For the reasons set forth in response to Question No. 1, *supra*, Multiple Intervenors advocates that the term "zero emissions" be defined based on operating characteristics (*i.e.*, the absence of incremental net greenhouse gas emissions), rather than attempting to identify all eligible technologies now, thereby risking excluding emerging technologies with similar operating characteristics. Multiple Intervenors has no objections if, in an Order, the Commission clarifies that the adopted definition is satisfied by the advanced nuclear, long-duration storage, *etc.*[6]

The Commission also should be extremely reluctant to adopt a definition of "zero emissions" that excludes technologies capable of providing "baseload" generation for the State, such as advanced nuclear. As the State's reliance on highly-intermittent forms of generation (*e.g.*, wind, solar) grows in the coming years, technologies that are capable of providing baseload

[6] As detailed, *supra* and *infra*, Multiple Intervenors opposes the creation of a new customer-funded program in this proceeding. That noted, if, *arguendo*, such a program is initiated over Multiple Intervenors' objections, the technologies eligible for subsidies/incentives should be limited to a subset of "zero emissions" sources that can provide baseload or dispatchable generation in furtherance of addressing future reliability needs.

(*i.e.*, continuous operation) or dispatchable (*i.e.*, available when needed) generation will be critical to maintaining reliability and, potentially, affordability. With respect to nuclear in particular, there is increasing activity in other states and countries, and New York should be open to, if not encourage, the development of new nuclear generation facilities where it makes sense from operational and economic perspectives.

3. How should a program to achieve the Zero-Emission by 2040 Target address existing and newly constructed nuclear energy resources. Should the program be limited to specific types of nuclear energy technologies and exclude others?

Initially, while Multiple Intervenors is supportive of the evaluation and the potential inclusion of nuclear generation as a zero-emission resource, this question includes a presumption that yet another customer-funded "program" is needed to comply with the CLCPA's 2040 Target. Inasmuch as such mandate still is 17 years away, it is not clear at this time if such a program is needed and, if so, when it optimally should be implemented. No analyses have been conducted suggesting that such a program must be implemented in 2023 – or 2024 – nor has any proposed design and scope of such a program been advanced for review and comment by interested parties.

If, *arguendo*, some type of program to foster development of zero emissions generation facilities ultimately is needed (at some point in time), the scope of such program should be limited to targeting those resources that possess the necessary characteristics to achieve compliance with 2040 Target while maintaining electric reliability. For instance, such program could be limited to those generation technologies that either generate electricity continuously (*i.e.*, baseload operation) or are able do so upon demand (*i.e.*, dispatchable operation). There is no reason to implement a new program, for instance, to

incentivize/subsidize wind or solar generation, despite the fact that they are considered zero emissions technologies.

If and to the extent a new program eventually is determined by the Commission as necessary to foster the development of zero emissions generation facilities, Multiple Intervenors is not aware of any reason why nuclear facilities should be excluded from consideration for such program. As understood by Multiple Intervenors, nuclear technology is zero emissions, and also has much-higher availability than other zero emission technologies. So long as the technology employed satisfies the definition of zero emissions and possesses desirable operating characteristics in terms of providing baseload or dispatchable generation, nuclear energy should be included, and Multiple Intervenors is not aware of any particular rationale upon which certain types of nuclear energy technologies should be excluded while others are included.

In terms of a customer-supported program, however, neither nuclear energy nor any other technology should be targeted specifically. If the Commission were to pick "winners" between competing technologies, the "losers" likely would be customers that would be forced to subsidize projects that do not represent the least cost options. Thus, the Commission first should define zero emissions technologies. Then, following further analyses and an opportunity for market-based solutions to develop, if, *arguendo*, the Commission needs to implement a new program, eligibility therefor should be based on necessary operating characteristics (*e.g.*, the provision of baseload or dispatchable generation) but otherwise be technology agnostic. To the extent such program is needed and implemented, eligible technologies should compete against each other to determine the least cost option(s).

4. Should new measures adopted to pursue compliance with the Zero-Emission by 2040 Target focus exclusively on generation and resource adequacy, or

should they also encompass a broader set of technologies that could be integrated into the transmission or distribution segments, or installed and operated behind-the-meter?

This question illustrates precisely why a customer-funded program would be premature at this time. Before committing more customer dollars towards a perceived problem well into the future, considerably more analysis is needed (above and beyond the limited arguments that may be submitted in response to this question). Based on studies conducted by the NYISO, New York eventually will need tens of thousands of megawatts of DEFRs to comply with the 2040 Target. Such resources, however, are not needed now or for some period in the future. Before rushing to have customers subsidize technologies that would be installed in utility transmission and distribution ("T&D") systems and/or operated behind-the-meter ("BTM"), the Commission first should analyze precisely what types of zero emission resources (*e.g.*, operating characteristics) will be needed, and when and where such need will exist. Moreover, the Commission should analyze when action might be needed to ensure such resources are in place when needed to maintain reliability, and also ascertain whether technological advancements may render customer-funded support unnecessary or reduced in magnitude if implementation of a new program, if needed eventually, is undertaken at a later date.[7]

Furthermore, if the Commission ultimately elects to implement a new program at some point in time, the primary objective of that program (presumably, to provide required reliability at the least cost) should be well defined, and any incremental customer funding obligation should be very limited and based on the results of a competitive process designed to minimize costs and maximize benefits. Thus, whether technologies focused on the utilities'

[7] Given the myriad of programs and initiatives that the Commission already has committed customers to support financially, it also should conduct analyses as to the present and future ability of customers to afford additional financial commitments before contemplating same.

T&D systems and/or BTM operation should be eligible to participate in the program is dependent upon whether such technologies are responsive to the program's primary objective. Moreover, even if, *arguendo*, technologies focused on T&D systems and/or BTM operation can satisfy the primary objective of a potential future program, they should not be subsidized by customers absent a clear demonstration that they also represent the least-cost options available.

5. Should any program to achieve the Zero-Emission by 2040 Target specify subcategories of energy resources based on particular characteristics, such as ramp rates, the duration of their operational availability, or their emissions profile with respect to local pollutants?

Again, as noted, *supra*, this question presumes that yet another customer-funded "program" is needed to comply with the 2040 Target, which Multiple Intervenors does not concede. If the Commission reaches such a conclusion, the primary objective of any incremental customer-funded program should be well defined and limited to ensure CLCPA compliance and/or improving or maintaining electric reliability at the lowest practical cost. Given the State's current, growing reliance on weather-dependent and highly-intermittent renewable technologies, requiring any new program to be focused on baseload and/or dispatchable generating technologies appears reasonable.

Multiple Intervenors cautions, however, against being over-specific with respect to eligibility criteria, or attempting to incentivize/subsidize selected technologies. Such approaches would not support efforts to ensure least-cost compliance and maximize competition for increasingly-scarce customer funds. Thus, if a new program is implemented at some future time, the Commission should refrain from utilizing eligibility criteria that attempt to pick winners among competing technologies, or are unduly narrow so as to limit competitive responses to solicitations.

6. What role does technology innovation need to play to meet the CLCPA's Zero-Emission by 2040 Target?

There needs to be tremendous technological innovation between now and 2040 to eliminate all emissions from the electric generation sector. According to the NYISO, tens of thousands of megawatts of capacity from DEFRs will be needed to comply with the 2040 Target while still maintaining electric reliability. Significantly, however, no DEFRs that are technologically and economically viable have been identified at this time. From Multiple Intervenors' perspective, this is very concerning. The State has placed itself in a position of having to comply with a statutory mandate for which no compliance "path" appears viable at this time. Moreover, while reasonable efforts should be made to continue reducing carbon emissions from the electric generation sector, it is imperative that both reliability and affordability be maintained at all times.

Tremendous technological innovation will be needed for New York to comply with the CLCPA 2040 Target at a cost that does not send even more New York businesses and residents departing to other states. Importantly, utility customers should not be funding this innovation, nor can they afford to do so given the myriad of other substantial, long-term financial commitments already imposed on them. Rather, the State is going to need to rely on technological innovations occurring at the federal level and within other states and countries. Additionally, funding sources other than utility customers need to be identified.

Recently, New York State Department of Public Service Staff identified that almost **$44 billion** in collections from customers in furtherance of CLCPA objectives already has been authorized to date by the Commission.[8] In the recently-issued Comptroller's Report, New

[8] Case 22-M-0149, *Proceeding on Motion of the Commission Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community*

York State Comptroller Thomas P. DiNapoli highlighted the increasing burden that renewable generation was placing on New York utility customers and recommended that: "Every effort should be made to … hold down costs to the State's electric customers."[9]

Multiple Intervenors recommends that the Commission and New York State Department of Public Service Staff track technology innovations in other states and countries relating to DEFRs. Potential opportunities to partner with the federal government and/or other states should be evaluated, as should the active pursuit of funding sources other than incremental collections from utility customers.

7. Should life cycle emissions impacts be considered when characterizing energy resources? If so, how?

Multiple Intervenors currently advocates no position in response to this question other than to contend that if, *arguendo*, life cycle emissions impacts are considered for certain generation technologies, they should be considered for all technologies. In other words, such impacts should not be considered only for selected technologies, thereby sparing other technologies from similar scrutiny. For instance, if life cycle emissions are to be evaluated and considered for, hypothetically, nuclear generation, then they also should be evaluated and considered for solar generation, land-based wind generation, and offshore wind generation, among other resources.

In Multiple Intervenors' opinion, the question of whether and how to weigh life cycle emissions impacts associated with energy resources is somewhat premature. If, *arguendo*,

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Protection Act, New York State Department of Public Service First Annual Informational Report on Overall Implementation of the Climate Leadership and Community Protection Act (dated July 20, 2023) at 29 (totaling customer-funded expenditures authorized to date, but omitting certain future, significant financial commitments being imposed on utility customers).

[9] Comptroller's Report at 16.

the Commission elects to go down this route, the first step should focus on developing the methodologies that would be used to calculate life cycle emissions for each generation technology. The second step then should focus on whether and how such information should be considered. There may be potential arguments on both sides of this issue, and, in Multiple Intervenors' opinion, the Commission's primary focus should be on compliance with CLCPA mandates at the least cost to customers, consistent with maintaining, if not improving, reliability.

8. Given that the feedstocks and other resources required to produce renewable natural gas are limited and will be in demand in other sectors of New York's economy, how should this fuel be considered in the context of this proceeding?

Multiple Intervenors does not advocate any specific positions with respect to renewable natural gas, but reiterates its position advanced, *supra*, that the definition of zero-emission resources be based on technology-agnostic emissions characteristics. The Commission should refrain from picking winners and losers among technologies. The current and/or potential availability of a technology should not determine whether it qualifies as a zero-emission resource. Moreover, as noted previously, it is premature for the Commission to consider adoption of a customer-funded program to incentivize/subsidize selected resources.

9. In what ways might a program to meet the Zero-Emission by 2040 Target require reexamination and possibly revision of different tiers of the Clean Energy Standard? Should one or more of the policy approaches that have been used to implement the CES be considered to meet the Zero-Emission by 2040 Target?

Initially, as detailed, *supra*, it would be premature for the Commission to adopt a new, customer-funded program to incentivize/subsidize zero-emission resources, which have yet to be defined and which may not be needed for quite some time. Additionally, one problem with the Clean Energy Standard approach is it still involves the Commission picking winners and losers from selected technologies and there has yet to be any analysis of the least-cost approach

or approaches for complying with the CLCPA. Absent any real (and transparent) analysis of cost, there are no assurances that the current approach, with separate tiers for different resources, is producing a mix of technologies, located when and where most needed, that remotely resembles a least-cost compliance strategy. Instead, customers simply are required to fund a hodge-podge of resources with no coherent strategy evident.

10. What is necessary to align a program to meet the Zero-Emission by 2040 Target with the priority of just transition embedded within the CLCPA?

Multiple Intervenors advocates no position in response to this question.

11. How might the benefits of a program to meet the Zero-Emission by 2040 Target be measured for the purpose of ensuring that, consistent with PSL §66-p(7), it delivers "substantial benefits" to Disadvantaged Communities?

Multiple Intervenors advocates no position in response to this question.

12. NYISO has adopted an effective load carrying capacity (ELCC) rubric and treatment of Zones J and K as load pockets with special resource adequacy requirements. How should these constructs and other NYISO market rules inform design of a program meant to support the development and deployment of resources capable of achieving a zero emissions grid?

Multiple Intervenors advocates no position in response to this question.

13. What additional studies, if any, should the Commission undertake with respect to the development and deployment of resources capable of achieving a zero emissions grid?

At a minimum, the Commission should analyze and render its own conclusions regarding: (a) the amount of DEFRs that will be needed to maintain reliability in New York; (b) when DEFRs first will be needed and approximately how much will be needed at that time; (c) the desired or necessary locations for DEFRs when needed; (d) the approximate time it may take to develop such DEFRs; and (e) the least cost path forward. It seems to Multiple Intervenors that such forecasts are, or should be, a prerequisite to contemplating any type of new program focused on incentivizing/subsidizing DEFRs. Such information is needed so that a program –

particularly if dependent upon incremental collections from customers – is not implemented prematurely and/or at an excessive cost.

Said information also is needed with respect to the timing of the program, as well as its potential scope. If, for instance, DEFRs are not needed for a decade or longer, then the Commission reasonably could (and should) conclude that it would be premature to require customers to fund a program to incentivize/subsidize DEFRs now, when technological advancements in the coming years could radically change what DEFRs will be developed and when and where they need to be sited. In other words, rather than rushing to commit even more customer funds at this time, the Commission should act cautiously and prudently, and have a fully-supported strategy, based on well-conducted (and transparent) analyses as to what truly is needed.

14. Given that New York is not the only jurisdiction investigating options and opportunities for the research, development, and deployment of new technologies capable of achieving a zero emissions grid, how should the State seek to coordinate with and otherwise draw upon efforts that are underway elsewhere?

Multiple Intervenors advocates no position on the best way for New York to work with other jurisdictions on matters relating to the research, development, and deployment of DEFRs, but concurs strongly that it should be seeking "to coordinate with and otherwise draw upon efforts that are underway elsewhere." Importantly, Multiple Intervenors urges the Commission to figure out how such coordination should be taking place before committing customers to funding yet another program.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to adopt policies in conformance with these Comments. While it is appropriate for the Commission to commence an examination of the scope and the magnitude of reliability needs that may arise in the future as the State strives to comply with the CLCPA as well as potential solutions thereto, it would be premature to implement programs or policies that impose new, incremental financial obligations on customers to solve such potential future needs at this time.

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