

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.

David B. Johnson  
Zachary W. Perdek  
READ AND LANIADO, LLP  
Attorneys for Independent Power Producers  
of New York, Inc.  
25 Eagle Street  
Albany, New York 12207  
(518) 465-9313  
dbj@readlaniado.com  
zwp@readlaniado.com

Dated: February 20, 2024

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.

The Climate Leadership and Community Protection Act (“CLCPA” or “Climate Act”) establishes a target of a zero-emission statewide electric system by 2040 (the “2040 Zero Emissions Target”).<sup>1</sup> Comprehensive studies confirm existing renewable energy technologies alone are incapable of meeting the electric needs of New York consumers and ensuring electric system reliability if all fossil-fueled generation were to be removed to meet the 2040 Zero Emissions Target.<sup>2</sup> Recognizing this fact, on May 18, 2023, the New York State Public Service Commission (the “Commission”) issued an order in the above-captioned case initiating a process to identify the necessary complementary technologies that must be added to the system to ensure its ongoing reliability and the mechanisms needed to facilitate their development.<sup>3</sup>

---

<sup>1</sup> The 2040 Zero Emissions Target is codified in Section 66-p(2) of the New York Public Service Law (“PSL”). It provides, in relevant part: “. . . the commission shall establish a program to require that: (a) a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty shall be generated by renewable energy systems; and (b) that by the year two thousand forty (collectively, the “targets”) the statewide electrical demand system will be zero emissions.”

<sup>2</sup> 2021-2040 System & Resource Outlook, New York Independent System Operator, Inc. (Sept. 22, 2022) (“2022 System Study”) at 9–12 (finding as much as 45 GW of dispatchable energy free, non-renewable resources will be needed by 2040 to ensure system reliability), [https://www.nyiso.com/documents/20142/32663964/2021-2040\\_System\\_Resource\\_Outlook\\_Report\\_DRAFT\\_v15\\_ESPWG\\_Clean.pdf/99fb4cbf-ed93-f32e-9acf-ecb6a0cf4841](https://www.nyiso.com/documents/20142/32663964/2021-2040_System_Resource_Outlook_Report_DRAFT_v15_ESPWG_Clean.pdf/99fb4cbf-ed93-f32e-9acf-ecb6a0cf4841).

<sup>3</sup> Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Initiating Process Regarding Zero Emissions Target (May 18, 2023) (“May 18 Order”).

The member companies of Independent Power Producers of New York, Inc. (“IPPNY”), a not-for-profit trade association representing the independent power industry in New York State, have invested billions of dollars in New York’s competitive electric generation system to meet the electric needs of New York consumers and ensure system reliability since the inception of retail competition in 1996. IPPNY member companies continue to be actively involved in the development and ongoing maintenance of electric generating facilities, including renewable resources, the generation, sale, and marketing of electric power, the development of natural gas facilities and the development of energy storage 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, run-of-river hydro, biomass, energy storage, waste-to-energy and nuclear. On August 16, 2023, IPPNY submitted comments in response to the Commission’s June Notice regarding resources that are capable of supporting the reliability of a zero-emissions electric system and the actions that should be taken to achieve the 2040 Zero Emissions Target.<sup>4</sup>

Informed by the comments filed by IPPNY and other parties in response to the June Notice, on October 10, 2023, the Commission issued a notice seeking further comments on a series of additional questions.<sup>5</sup> In the October Notice, the Commission focused on how certain terms in the CLCPA pertaining to the Commission’s requirement to develop a program to meet the 2040 Zero Emissions Target should be interpreted.

Before addressing these individual questions delineated below by section heading, IPPNY reiterates the general points it made in its August Comments in which IPPNY

---

<sup>4</sup> Case 15-E-0302, *supra*, Notice Extending Comment Period (June 28, 2023) (“June Notice”); Case 15-E-0302, *supra*, Comments of Independent Power Producers of New York, Inc. (Aug. 16, 2023) (“August Comments”).

<sup>5</sup> Case 15-E-0302, *supra*, Notice Seeking Further Comment (Oct. 20, 2023) (“October Notice”).

demonstrated the Legislature granted the Commission broad discretion and authority to design a program to meet 2040 Zero Emissions Target while maintaining system reliability and limiting rate impacts to electricity consumers.<sup>6</sup>

As highlighted in IPPNY's August Comments, the Legislature granted the Commission express authority to "consider and where applicable formulate the program[s] to address impacts of the program[s] on safe and adequate electric service in the state under reasonably foreseeable conditions" and "modify the obligations of jurisdictional load serving entities and/or the targets upon consideration of" impacts to safe and adequate electric service.<sup>7</sup> The CLCPA is also carefully bounded to ensure reliability and affordability, providing that "the Commission may temporarily suspend or modify" the program if it finds "that the program impedes the provision of safe and adequate electric service; the program is likely to impair existing obligations and agreements; and/or that there is a significant increase in arrears or service disconnections that the commission determines is related to the program."<sup>8</sup>

Thus, the Legislature's intent is clear that maintaining the reliability of the electric system without unduly increasing costs for electric service borne by New York consumers are the paramount considerations; neither can be subordinated to meet the 2040 Zero Emissions Target. Commensurate therewith, the Commission thus has ample authority to define relevant terms in the PSL enacted under the CLCPA in a manner that best achieves these parameters.

As noted above, the CLCPA does not define "zero emissions." Given that the CLCPA does provide other definitions, this fact means the term must be defined by the Commission as a

---

<sup>6</sup> IPPNY's comments do not necessarily represent the position of its individual members.

<sup>7</sup> May 18 Order at 9 (quoting PSL § 66-p(2)).

<sup>8</sup> PSL § 66-p(4).

matter of law.<sup>9</sup> Based on the CLCPA’s explicit grant of authority to the Commission to fashion the program in a manner that ensures it will not adversely impact electric system reliability and the Commission’s longstanding authority and obligation to ensure safe and adequate electric service generally under PSL § 65, the Commission is authorized to define zero emissions and other undefined terms in PSL § 66-p(2), designate the resources to achieve the 2040 Zero Emissions Target and establish the mechanisms to secure them in a manner that best ensures electric system reliability will be maintained during, and following, the transition to a zero emissions electric system.

Based on the foregoing and consistent with the Climate Act’s establishment of a goal of net zero emissions across all sectors of the economy by 2050, the Commission should accordingly issue an order establishing that greenhouse gas (“GHG”) emissions are measured on a net basis rather than a gross basis for purposes of meeting the 2040 Zero Emissions Target.<sup>10</sup> The Commission should also expressly find in its order that technologies, whether alone or combined with other technologies, that reduce total emissions while producing a *de minimis* level of emissions qualify as zero emissions resources in compliance with the CLCPA’s mandate to meet the 2040 Zero Emissions Target. Such a definition would qualify a potential resource, such as a generator using carbon capture, utilization, and storage (“CCUS”) (including direct air capture (“DAC”)), as a zero emissions source if it reduces GHG emissions by 90% to 99%, or, in

---

<sup>9</sup> Commission action is authorized if a realistic appraisal of the particular situation demonstrates that its “administrative action reasonably promotes or transgresses the pronounced legislative judgment” even absent explicit statutory authorization. *In re Consol. Edison Co. of N.Y. v. Pub. Serv. Comm’n of State of N.Y.*, 47 N.Y.2d 94, 102 (1979), *rev’d on other grounds*, 447 U.S. 530 (1980).

<sup>10</sup> New York Environmental Conservation Law (“ECL”) § 75-0109. The Climate Action Council’s (“Council”) Scoping Plan stated that it “is designed to act as a plan that the State should follow to meet the requirements of the statewide greenhouse gas (GHG) emission limits and achieve statewide net zero emissions pursuant to the [CLCPA].” *Climate Action Council Scoping Plan*, New York State Climate Action Council (Dec. 2022) (“Scoping Plan”), at 51, <https://climate.ny.gov/-/media/Project/Climate/Files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>.

the case of renewable natural gas (“RNG”), it results in a net reduction of GHG emissions to zero. Defining zero emissions in this manner will cost effectively and efficiently yield the complementary resources needed to fill the gap and meet the 2040 Zero Emissions Target reliably.

- 1. PSL §66-p does not expressly indicate whether “zero emissions” refers to greenhouse gas emissions only, or greenhouse gases and also the “co-pollutants” referred to elsewhere in the CLCPA. Commenters offered different interpretations. Staff asks for further comment on this issue. Does the CLCPA, the PSL, and other relevant sources of authority argue for reading “emissions” in the term “zero emissions” as encompassing all air pollutants, greenhouse gas emissions only, or some other subset of air pollutants?**

Nothing in the CLCPA, its legislative history, or any other relevant source of authority suggests the term “zero-emissions” in PSL § 66-p must encompass any emissions other than GHG emissions. Absent express statutory language, the primary consideration in the interpretation and construction of a statute is to ascertain and give effect to the intention of the Legislature.<sup>11</sup> As established below, the language used in the legislative findings and other non-PSL provisions in the CLCPA explicitly evidences the Legislature’s intent that the purpose of the CLCPA is to address climate change by reducing the State’s GHG emissions. Accordingly, because co-pollutants are not GHGs and do not contribute to climate change, it would be unreasonable to broaden the word “emissions” in PSL § 66-p to encompass anything other than GHG emissions.

Notably, Section 1 of the CLCPA contains legislative findings unambiguously expressing the Legislature’s intent to address climate change by reducing GHG emissions. The CLCPA provides that “climate change is adversely affecting economic well-being, public health, natural

---

<sup>11</sup> N.Y. Stat. Law §92(a); *see also* *Danskammer Energy, LLC v. N.Y. State Dep’t of Env’t Conservation*, 76 Misc.3d 196, 247 (2022) (citing *Avella v. City of New York*, 29 N.Y.3d 425 (2017)).

resources, and the environment of New York,”<sup>12</sup> the “severity of current climate change . . . will be affected by the actions undertaken by New York and other jurisdictions to reduce greenhouse gas emissions,”<sup>13</sup> and therefore, the State’s goal is to “reduce greenhouse gas emissions from all anthropogenic sources 100% over 1990 levels by the year 2050.”<sup>14</sup> The CLCPA’s legislative findings do not identify, much less discuss or set, emissions targets for non-GHG air pollutants. Accordingly, defining the term zero-emissions as solely referring to GHG emissions reasonably gives effect to the stated intention of the Legislature.

In addition, the Legislature’s intent is further demonstrated through the specific language used, and not used, in the non-PSL sections of the CLCPA. It is a general principle of statutory interpretation that where different terms are used in various parts of a statute, it is reasonable to assume that a distinction between them is intended.<sup>15</sup> In the CLCPA’s amendments to the ECL, GHGs and co-pollutants are expressly defined as separate terms and are applied to distinct provisions.<sup>16</sup> The amendments to the ECL require the Council to “identify measures to maximize reductions of both greenhouse gas emissions and co-pollutants in disadvantaged communities.”<sup>17</sup> The use of both terms in this provision demonstrates the Legislature’s intent to specify the CLCPA’s provisions applied to each group of emissions in this specific context. Co-pollutants are also expressly addressed as a separate concept in: (1) ECL § 75-0103(14)(b)(i), requiring the Council to evaluate public health co-benefits such as the reduction of co-pollutants; (2) ECL § 75-0109(3)(c), requiring the Department of Environmental Conservation (“DEC”) to

---

<sup>12</sup> 2019 N.Y. Sess. Laws Ch. 106 (McKinney) (“CLCPA”) § 1(1).

<sup>13</sup> *Id.* § 1(2)(a).

<sup>14</sup> *Id.* § 1(4).

<sup>15</sup> See *Albano v. Kirby*, 36 N.Y.2d 526, 530 (1975).

<sup>16</sup> See ECL §§ 75-0101(3), (7).

<sup>17</sup> ECL § 75-0109(3)(d).

ensure that activities undertaken to comply with its regulations do not result in a net increase in co-pollutant emissions in disadvantaged communities; and (3) ECL § 75-0109(4)(1)(iii), directing the DEC to design an alternative compliance mechanism to prevent any increase in the emissions of co-pollutants.

The Legislature was clearly aware of the language at its hands if it had intended to expand the PSL provisions to incorporate co-pollutants. Thus, if the Legislature intended the amendments to the PSL to address co-pollutants, it would have expressly structured the statute accordingly. The CLCPA's ECL and PSL provisions are, however, indisputably distinguishable in this regard, evidencing the Legislature's clear intent vis-à-vis both sets of laws.

Accordingly, the Commission should define the word "emissions" in PSL § 66-p as only applying to GHG emissions. This definition is consistent with the express language of the CLCPA, the Legislature's intent and, as discussed in IPPNY's response to Question 3 below, recognizes the Commission's paramount mandate to ensure system reliability.

**2. Multiple commenters discussed the relationship between the term "zero emissions" and the term "net zero emissions," which appears elsewhere in the CLCPA but not in provisions to be codified in the PSL. Staff asks whether the Commission must read these terms as distinct, and if so, how the Commission should characterize and apply the distinction between them.**

The Commission should not distinguish between "zero emissions" and "net zero emissions." Section 66-p(2)(b) of the PSL provides that by 2040 "the statewide electrical demand system will be zero emissions." The CLCPA requires the Council's Scoping Plan to make recommendations for achieving "net zero emissions in *all* parts of the economy" by 2050.<sup>18</sup> All provisions of a law must be considered and interpreted consistently and the law itself must be

---

<sup>18</sup> ECL § 75-0103(11) (emphasis added).



given its full effect.<sup>19</sup> All parts of the economy necessarily must include the generation sector. Notably, consistent with the statutory language, the Council’s Scoping Plan accordingly recommended:

Develop net zero energy systems: NYSERDA and DPS should develop energy systems that can best support a net zero emissions economy in New York, including programs that leverage private capital to invest in conversion technology for bio-based feedstock into bio-based products.<sup>20</sup>

As demonstrated in comments filed to date, it is also important to consider that “zero emissions” is itself an impracticable standard because “very few sources of energy have literally zero GHG emissions associated with their production and throughout their life cycle.”<sup>21</sup> New York courts have repeatedly rejected statutory constructions that produce unreasonable or absurd applications of the law.<sup>22</sup> The Legislature’s omission of the word “net” from PSL § 66-p(2)(b) of the PSL thus cannot be deemed to somehow require the Commission to develop a program that was not achievable.

Based on the foregoing, the Commission should define zero emissions as “an electrical demand system that delivers net zero GHG emission equivalent electricity.” Likewise, comporting with this definition, technologies that produce *de minimis* emissions compared to the emissions they reduce should also fall within the definition of zero emissions. Addressing the statute consistently in this manner would allow the wide array of technologies that produce net

---

<sup>19</sup> See NY Jur 2d Statutes § 184; *see also Carney v. Philippone*, 1 N.Y.3d 333, 339 (2004).

<sup>20</sup> Scoping Plan at 309.

<sup>21</sup> Case 15-E-0302, *supra*, Comments of National Grid in Response to May 18, 2023 Order Initiating Process Regarding Zero Emissions Target (Aug. 16, 2023) at 4.

<sup>22</sup> *People v. Schneider*, 37 N.Y.3d 187, 197 (2021); *People v. Garson*, 6 N.Y.3d 604, 614 (2006); *Long v. State of N.Y.*, 7 N.Y.3d 269, 273 (2006); *N.Y. State Ass’n of Crim. Def. Lawyers v. Kaye*, 96 N.Y.2d 512, 519 (2001).

zero emissions, such as RNG and CCUS (including DAC), to fill the identified gap and provide complementary resources needed to maintain system reliability.

Defining zero emissions in this fashion would also put New York in line with other jurisdictions working on similar greenhouse gas emission reduction programs. For example, Colorado’s Renewable Energy Standard allows for “Greenhouse Gas Neutral” resources to be included in its definition of zero emissions.<sup>23</sup> A myriad of other states’ definitions including net zero resources as part of their zero emissions definition are referenced in IPPNY’s August Comments.<sup>24</sup>

- 3. The Commission’s Initiating Order notes that the Department of Environmental Conservation (DEC), pursuant to regulations it adopted at 6 NYCRR pt. 496 under the Environmental Conservation Law as amended by the CLCPA, has counted the emissions arising from the combustion of biomass for electricity generation on a gross rather than a net basis. Staff asks for further comment on whether DEC’s emissions accounting regulations constrain or otherwise inform the Commission’s definition of the phrase, “by the year [2040] the statewide electrical demand system will be zero emissions.”**

DEC’s regulations do not constrain or otherwise inform the Commission’s definition of the phrase “by the year [2040] the statewide electrical demand system will be zero emissions.” Indeed, the converse is true.

As IPPNY explained in its August Comments, the CLCPA constrains DEC’s actions, not the Commission’s, by reaffirming the Commission’s obligations to ensure safe and adequate electric service.<sup>25</sup> In specifically granting the Commission the authority to fashion its program to achieve the 2040 Zero Emissions Target, the Legislature expressly authorized the Commission to modify such target to ensure safe and adequate electric service. In contrast, the Legislature

---

<sup>23</sup> See August Comments at 15 (citing Colo. Rev. Stat. § 40-2-124(1)(a)).

<sup>24</sup> See *Id.* at 15–16.

<sup>25</sup> *Id.* at 9.

directed DEC to adopt regulations to achieve the GHG Targets without authorizing DEC to fashion its regulations or modify the GHG Targets to ensure safe and adequate electric service. This statutory construct thus accounts for the fact that the Commission is the State agency that must protect public health and safety by taking regulatory action to maintain electric system reliability.<sup>26</sup>

Because the Legislature did not condition the Commission’s authorization on other agency actions, DEC regulations implementing the GHG Targets cannot undercut the Commission’s obligation to implement the CLCPA in a manner that ensures safe and adequate service.<sup>27</sup> As a matter of law, various parts of the CLCPA related to the Commission and DEC must be read harmoniously.<sup>28</sup>

It is certainly the case that the Commission and DEC should work closely together, in consultation with the New York Independent System Operator, Inc. (“NYISO”), to establish rules implementing the CLCPA that avoid inadvertently jeopardizing electric system reliability.<sup>29</sup>

---

<sup>26</sup> The Council’s Scoping Plan accurately notes, “[w]hile transitioning away from fossil fuel use, maintaining reliable access to power, whether through centralized or distributed energy sources, is crucial for maintaining good public health in our energy-dependent society.” Scoping Plan at 105.

<sup>27</sup> Courts have repeatedly rejected statutory constructions that produce unreasonable or absurd applications of the law. *People v. Schneider*, 37 N.Y.3d 187, 197 (2021); *People v. Garson*, 6 N.Y.3d 604, 614 (2006); *Long v. State of N.Y.*, 7 N.Y.3d 269, 273 (2006); *N.Y. State Ass’n of Crim. Def. Lawyers v. Kaye*, 96 N.Y.2d 512, 519 (2001).

<sup>28</sup> The courts must “harmonize the various provisions of related statutes and . . . construe them in a way that renders them internally compatible.” *Matter of Aaron J.*, 80 N.Y.2d 402, 407 (1992); *see* N.Y. Stat. Law §§ 97, 98. The Commission noted in its May 18 Order that DEC’s consideration of the combustion of biomass as contributing to gross emissions under the CLCPA “is relevant to, though, not necessarily determinative of, whether the use of biomass as fuel for power plants can be considered zero-emissions for the purpose of compliance with PSL §66-p(2), or net-zero for purposes of the CLCPA’s separate net-zero emissions target.” May 18 Order at 14. DEC’s regulations implementing the CLCPA should accommodate, not undercut, the Commission’s designation of RNG and derivatives thereof to fuel dispatchable emissions free resources as zero emissions because they are necessary to help maintain system reliability.

<sup>29</sup> For example, DEC should accede to the Commission’s definition of zero emissions as it relates to electric system resources and the Commission’s designation of zero emissions resources and forego adopting regulations implementing the GHG Targets that interfere, or are inconsistent, with the Commission’s determinations on these matters.

That said, in no event is the Commission’s authority here limited by DEC rulemakings. Commission determinations on these matters must stand.

IPPNY emphasizes time is of the essence. While the 2040 Zero Emissions Target sets requirements for 2040, numerous studies have confirmed failure to effectively manage the transition to this system will put system reliability at significant risk.<sup>30</sup> Notably, the NYISO’s 2023 second quarter Short-Term Assessment of Reliability (“STAR”) report identified a deficit in reliability margins as large as 446 megawatts (“MW”) in New York City beginning in the summer of 2025.<sup>31</sup> The deficit is driven primarily by the combination of a forecasted increase in peak demand and the expected unavailability of certain generators due to DEC’s Peaker Rule.<sup>32</sup>

On November 20, 2023, the NYISO utilized its expressly established authority under the Peaker Rule to implement a temporary solution, determining that retaining the Gowanus 2 & 3 and Narrows 1 & 2 peakers in New York City is necessary to address the reliability need.<sup>33</sup> Permanent solutions must be in place in New York City before this temporary solution can be discontinued.<sup>34</sup> Moreover, as the system continues to evolve, needs may well arise throughout New York State in the near term.<sup>35</sup> Accordingly, the Commission should act as quickly as

---

<sup>30</sup> See 2022 System Study at 5–8 (establishing as a key takeaway that generator additions, including dispatchable, non-renewable resources, and generator retirements must be staged carefully to ensure an orderly transition to the new system).

<sup>31</sup> *Short-Term Assessment of Reliability: 2023 Quarter 2*, NYISO (July 14, 2023) (“July STAR”), at 5, <https://www.nyiso.com/documents/20142/16004172/2023-Q2-STAR-Report-Final.pdf/5671e9f7-e996-653a-6a0e-9e12d2e41740>.

<sup>32</sup> *Id.* at 4. In 2019, DEC adopted a regulation to limit nitrogen oxides (“NOx”) emissions from simple-cycle combustion turbines, referred to as the “Peaker Rule,” which has caused over 1,000 MW of peaking facilities to deactivate or limit their operation. *Id.* at 11; see also ECL § 227.3.1 *et seq.*

<sup>33</sup> *Short-Term Reliability Process Report: 2025 Near-Term Reliability Need*, NYISO (Nov. 20, 2023), <https://www.nyiso.com/documents/20142/15930753/2023-Q2-Short-Term-Reliability-Process-Report.pdf/ccb826e3-e31d-157d-89a0-d2d11f600699>.

<sup>34</sup> *Id.*

<sup>35</sup> See *Short Term Assessment of Reliability: 2023 Quarter 3*, NYISO (Oct. 13, 2023) at 5 (highlighting potential for a deficient statewide system margin and needs in Upstate regions by 2025 due to large load projects supported by

possible to designate technologies that qualify as zero emissions so that developers and investors can begin considering them as replacements to fossil fueled generating facilities to meet reliability needs.

The costs of developing and constructing these new resources are likely to be significant. The expected operating time horizon for a facility defines the required amortization period to recover its capital costs.<sup>36</sup> Both facts are instructive here. As IPPNY established in its August Comments, given the significant risk of being saddled with stranded investment costs, developers were unlikely to propose a zero emissions technology to address this identified reliability need and other reliability needs that are likely to arise in the future until the Commission defines the technologies that will be deemed zero emissions sources.<sup>37</sup> Indeed, no such solutions were proposed in response to the NYISO's solicitation for solutions to the needs identified in the July STAR. Nor is that outcome likely to change absent Commission action. A Commission order resolving these matters is necessary to provide developers and investors certainty that projects will be compliant with the 2040 Zero Emissions Target so that investment decisions will be made to support New York projects.

- 4. Defining an emissions limit requires specifying, among other things, which elements of the lifecycle of a given emissions source are to be counted, and the threshold level above which emissions from that source are impermissible or disqualifying. Staff seeks comments on what discretion the CLCPA leaves for the Commission when it specifies each of these parameters.**

---

New York's extensive economic development efforts), <https://www.nyiso.com/documents/20142/39103148/2023-Q3-STAR-Report.pdf/836a011f-a2a8-2daf-bf5f-bf89ea79c2ff?t=1697223170004>.

<sup>36</sup> The NYISO is in the process of conducting its demand curve reset process for the 2025-2029 period and will begin defining these costs in that effort. IPPNY is actively providing the independent consultants input and will be closely monitoring this work.

<sup>37</sup> August Comments at 11.

The Commission has the discretion to define a resource's life cycle emissions as the emissions from energy production. The CLCPA does not require the definition to be broader to include life cycle emissions of the generation sources. While IPPNY acknowledges that the Scoping Plan mentions the importance of using GHG life cycle analysis for the energy sector, it also did not detail what comprises such life cycle analysis. Therefore, the Commission has discretion in determining whether and how life cycle analysis is performed on electric generation to determine a resource's status as a zero emissions resource.

If the Commission decides that life cycle analysis should include more than just the emissions from energy production, the Commission should consider any such life cycle analysis as IPPNY addressed in its August Comments.<sup>38</sup>

**5. PSL §66-p(2) designates “fuel cells which do not utilize a fossil fuel resource in the process of generating electricity” as a “renewable energy system.” What significance, if any, does this designation have for characterizing fuel cells that consume hydrogen, biogas, renewable natural gas, or other non-fossil fuels as “zero emissions”?**

The significance of the Legislature's inclusion of “fuel cells which do not utilize a fossil fuel resource in the process of generating electricity” as a “renewable energy system” is that such fuel cells are impliedly also zero emissions resources. As discussed in IPPNY's response to Question 1, the goal of the CLCPA is to reduce GHG emissions and achieve a zero emissions grid by 2040. Through PSL § 66-p(2)(a), the Legislature found that the primary way to accomplish this mandate is by requiring Load Serving Entities (“LSEs”) to obtain 70% of the electrical energy requirements of all end-use customers in the State from renewable energy systems. For both statutory requirements to be met, all renewable energy systems must also be zero emissions systems. Accordingly, fuel cells that consume non-fossil fuels must be treated as

---

<sup>38</sup> See August Comments at 41–42.

both renewable energy systems and zero emissions systems under the CLCPA. For example, proton exchange membrane (“PEM”) hydrogen fuel cells generate electric energy through a reaction between hydrogen and oxygen. Hydrogen is the input into the fuel cell system and is not a fossil fuel. Therefore, PEM hydrogen fuel cells systems are unequivocally eligible as a renewable energy system and a zero emissions resource.<sup>39</sup> Other fuel cell technologies, such as linear generators,<sup>40</sup> which use renewable natural gas and biogas are not “utilizing a fossil fuel resource in the process of generating electricity” are similarly eligible as a renewable energy system and a zero emissions resource.

This should not be interpreted, however, to mean that resources other than fuel cells that combust hydrogen, biogas and renewable natural gas cannot be deemed “zero emissions” because the Legislature did not define them as renewable under the CLCPA. As IPPNY explained in its August Comments, zero emissions sources continue to be a category of resources distinct from renewable energy systems, *i.e.*, all renewable energy systems comprise a subset of zero emissions systems; not all zero emissions systems must be renewable energy systems.<sup>41</sup> Indeed, for the CLCPA predefined percentage level requirements to be met while maintaining system reliability, no other interpretation is possible.

As noted above, the CLCPA explicitly granted the Commission the authority to fashion the program in a manner that ensures it will not adversely impact reliability of the electric

---

<sup>39</sup> New York State Energy Law Section 1-103(12) explicitly includes “hydrogen” as a “renewable energy resource,” unequivocally demonstrating that PEM hydrogen fuel cells squarely fit within the definition of “renewable energy systems.”

<sup>40</sup> The U.S. Internal Revenue Code defines a “fuel cell power plant” as “an integrated system comprised of a fuel cell stack assembly, or linear generator assembly, and associated balance of plant components which converts a fuel into electricity using electrochemical or electromechanical means.” 26 U.S. Code § 48.

<sup>41</sup> August Comments at 4. Using a Venn diagram construct, renewable energy systems should be viewed as a bubble located entirely within a larger zero emissions systems bubble.

system. Considering the indisputable evidence that a wide variety of non-renewable resources will need to be developed on a massive scale over the next decade to achieve the 2040 Zero Emissions Target, the Commission must define zero emissions to include resources that combust hydrogen, biogas, renewable natural gas and their derivatives as IPPNY discussed in detail in its August Comments.<sup>42</sup>

- 6. As some commenters point out, the “statewide electrical demand system” is not defined in the CLCPA or elsewhere. Staff asks for further comment on the meaning of this term. What definitions does the law support, and how do those definitions relate to electricity generated by resources that are located: (a) outside of New York State, or (b) behind-the-meter.**

The Commission should define Statewide Electrical Demand System as including all of the State’s retail load served by Commission-jurisdictional LSEs and non-jurisdictional LSEs that voluntarily comply with the Commission’s implementation of the CLCPA whether the LSEs procure their electricity from in-State or out-of-State generation. This is consistent with the CLCPA’s definition of Statewide Greenhouse Gas Emissions, which is defined as “the total annual emissions of greenhouse gases produced within the state from anthropogenic sources and greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the state and the extraction and transmission of fossil fuels imported into the state.”<sup>43</sup> Defining Statewide Electrical Demand System to include LSEs that serve retail load supplied by out-of-State resources is necessary to prevent emissions leakage by ensuring that high emitting generators in other states, that are not subject to the Commission’s jurisdiction, cannot be allowed to circumvent the requirements of the CLCPA.

---

<sup>42</sup> See August Comments at 16–29.

<sup>43</sup> ECL § 75-0101(13).



Dated: February 20, 2024  
Albany, New York

Respectfully submitted,

David B. Johnson  
David B. Johnson  
Zachary W. Perdek  
READ AND LANIADO, LLP  
Attorneys for Independent  
Power Producers of New York, Inc.  
25 Eagle Street  
Albany, New York 12207  
(518) 465-9313  
[dbj@readlaniado.com](mailto:dbj@readlaniado.com)  
[zwp@readlaniado.com](mailto:zwp@readlaniado.com)