NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 20-E-0197 – Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act

COMMENTS OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

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COMMENTS OF INDEPENDENT
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Pursuant to the New York State Public Service Commission ("Commission") Secretary's February 14, 2025, Notice Soliciting Comments in the above-captioned case,[1] Independent Power Producers of New York, Inc. ("IPPNY") hereby offers its comments on the updated Petition Requesting Designation of Certain Transmission Investments as a Priority Transmission Project ("Petition")[2] filed by the New York Power Authority ("NYPA") on January 14, 2025.[3] In its Petition, NYPA requests that the Commission designate its proposed Clean Path Transmission Project ("Project") as a Priority Transmission Project ("PTP") pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act ("Accelerated Renewable Act").[4]

The member companies of 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 operation and ongoing maintenance of a wide

[1] Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Notice Soliciting Comments (Feb. 14, 2025).

[2] Case 20-E-0197, *supra*, Petition Requesting Designation of Certain Transmission Investments as a Priority Transmission Project (Jan. 14, 2025) ("Petition").

[3] IPPNY's comments do not represent the position of all its individual members.

[4] Petition at 1–2.

range of electric generating technologies, including renewable resources, the generation, sale, and marketing of electric power, the development of new generation 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 form of baseload and variable generation technology available today, such as wind, solar, natural gas, low-sulfur oil, run-of-river hydro, biomass, energy storage, waste-to-energy, and nuclear. IPPNY recognizes the need for in-State transmission expansion to enable greater delivery of upstate generation to downstate load centers and to address reliability concerns in Zone J that have been identified in recent NYISO planning studies.

The Accelerated Renewable Act, among other things, required the Commission to establish a new transmission planning process for PTPs, which are projects that are needed on an "expeditious" basis to meet the goals of the Climate Leadership and Community Protection Act ("CLCPA").[5] The Accelerated Renewable Act also identified NYPA as the entity to develop PTPs. NYPA's proposed Project, as re-proposed in the Petition, is a major part of the Clean Path New York ("CPNY Project") transmission and renewable generation project. The New York State Energy Research and Development Authority ("NYSERDA") awarded the CPNY Project a Tier 4 Renewable Energy Credit ("REC") contract after a competitive solicitation, which the Commission approved after a deliberative process. In a filing to the Commission dated June 14, 2023, the sponsors of the CPNY Project indicated it was no longer viable at its previously contracted price.[6] NYSERDA notified the Commission on November 27, 2024 that its Tier 4

[5] L. 2020, ch. 58, Part JJJ, § 7.4.

[6] *See* Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard*, Petition of Clean Path New York LLC to Address Post-COVID Impacts and Associated Considerations Concerning the Tier 1 Eligible Generation Component of its Clean Energy Standard Tier 4 Renewable Energy Certificate Contract (June 14, 2023).

REC contract with the CPNY Project was terminated by the parties.[7] As discussed below, the Commission has consistently required that renewable resources and zero emission resources needed to meet State policy goals be selected through a rigorous competitive process to ensure the least cost to electricity ratepayers. Conducting a competitive solicitation for new transmission lines subject to cost-of-service rates is the best way to ensure the lowest possible cost to ratepayers.

The Commission Should Require the Use of Competitive Solicitations to Avoid Burdening Ratepayers with Unnecessary Costs

The Petition estimates that the cost of the Project will be approximately $5.2 billion.[8] NYPA asks the Commission to allow its Project to obtain cost-of-service rate recovery without considering whether other projects could provide greater public benefits at lower cost. A process not subject to a competitive solicitation process risks burdening ratepayers with costs that could have otherwise been avoided. Notably, the Petition makes several representations that are incorrect or impossible to verify. While capital project cost estimates must incorporate some speculation, the risk of inaccuracies is mitigated by a competitive solicitation process because bidders compete to propose a project with the lowest costs.

For example, NYPA contends that the proposed Project results in, at worst, a neutral benefit-cost ratio, and at best a more than three to one benefit cost ratio.[9] However, the Petition does not provide any substantive basis for such representation. The Petition also does not examine whether any other possible solution or combination of solutions could result in a more favorable benefit-cost ratio.

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[7] *See* Case 15-E-0302, *supra*, NYSERDA Notice of CPNY Mutual Termination (Nov. 27, 2024).

[8] Petition at 16.

[9] *Id*. at Attachment B.

NYPA asserts that:

> If NYSERDA were to conduct a new Tier 4 solicitation, not only would this delay the in-service date of an upstate to downstate transmission line, but it would come at a higher cost due to several factors, including: (i) the new contracts for Tier 1 projects contain higher prices than contemplated in the original Tier 4 solicitation; (ii) the introduction by the [New York Independent System Operator, Inc. ("NYISO")] of capacity accreditation for valuing capacity; and (iii) higher inflation and interest rates and supply chain constraints.[10]

This argument ignores the fact that the renewable power that will flow on the Project will undoubtably need Tier 1 REC contracts and will be impacted by capacity accreditation and higher inflation and supply chain constraints. By holding a Tier 4 solicitation, a developer could propose a lower cost transmission line than the Project. While the cost of Tier 4 REC contracts for the renewable generation that will be transmitted over the line might be higher than when NYSERDA held the last Tier 4 auction, this is not a fair comparison, because the cost of the renewable generation REC contracts would likely be the same if NYSERDA signed Tier 1 contracts with these projects. Also, there is no binding requirement proposed by NYPA that sufficient new renewable supply will be constructed to serve the Clean Path line, as was the case with the prior Tier 4 contract for Clean Path New York that was recently terminated. Thus, uncertainty exists about whether its proposed project represents the lowest possible cost to consumers because the revised project, which does not include any renewable generation, has not been subject to the rigors of a competitive solicitation process. Although a new competitive Tier 4 or Order 1000 Public Policy Transmission Planning Process ("PPTPP") initiation may take more time, it is the only way to ensure the most economic pricing for consumers.

[10] *Id*. at 20, fn.44.

Ultimately, consumers will have to pay higher costs for whatever renewable power flows on the transmission line due to the same inflationary factors that caused the rebidding of Tier 1 contracts to increase in price. Notably, the Tier 4 contract for CPNY was rendered non-viable because the renewable projects comprising the project could not be built unless their Tier 1 contracts were amended to provide them with higher REC payments. The Commission rejected by unanimous vote requests to modify Tier 1 contracts, siting its long-standing policy to leverage market forces and noting that a departure from competitive, market-based structures "would present a significant financial risk to ratepayers and to utilities."[11] The Commission, instead, required NYSERDA to hold new competitive solicitations in which these and other parties could compete to ensure the lowest cost for consumers. The Commission acknowledged the concerns that conducting new solicitations could delay achievement of the CLCPA goals, but the Commission stated that it did not find that its CLCPA obligations required it to depart from its longstanding approach to renewable resource procurement. The Commission emphasized its "obligation to pursue the CLCPA targets in the most cost-effective manner possible."[12] Given the foregoing, without a competitive solution it is impossible to know whether the proposed Project represents the lowest possible cost and value to consumers.

Accordingly, the use of a competitive solicitation process is the best way to ensure the most cost-effective solution for ratepayers is selected and is consistent with the Accelerated Renewables Act. NYPA's proposal to competitively select a development partner for its Project does not address this concern whatsoever, it is merely a capital raise process for a potentially non-competitive project, as NYPA does not have an unlimited balance sheet. The solicitation of

[11] Case 15-E-0302, *supra*, Order Denying Petitions Seeking to Amend Contracts with Renewable Energy Projects (Oct. 12, 2023), at 34–36.

[12] *Id.* at 54.

a development partner would not provide competitive proposals of alternative solutions that may provide greater benefits at lower costs than the proposed Project. An established competitive solicitation process—such as the NYISO's PPTPP or a Commission-directed Tier 4 action—would allow the market to respond with cost-effective and creative solutions.

The State has a strong track record of successful competitive solicitations that resulted in diverse and creative solutions at the least cost to electricity ratepayers, and IPPNY urges the continued application of its policy. Given the recent heightened concerns about affordability in this State, it would be prudent for the Commission to direct a competitive solicitation to ensure that NYPA's project is the best outcome for New York ratepayers.[13] In its recent comments on the latest round of PPTPP proposals, the NYISO stated that "[i]f the Commission considers it necessary to continue the progress towards meeting New York's energy policies at an accelerated pace, the NYISO encourages it to continue to timely identify transmission needs for evaluation in the [PPTPP] by focusing on efficient and cost-effective solutions that provide the most benefit to the system across a wide range of potential paths in achieving the CLCPA."[14]

As demonstrated in the Competitive Power Benefits for New Yorkers report ("Report") filed with the Commission in Case 15-E-0302 on March 26, 2025, departing from competitive market structures substantially risks increased costs to ratepayers, chilling private investment in electric infrastructure, and slowing achievement of the State's climate goals.[15] "[I]ntroducing competition into transmission development stimulates innovation, reduces costs, and provides

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[13] *See e.g.*, Case 24-E-0645, *In the Matter of New York Independent System Operator, Inc. Proposed Public Policy Transmission Needs for Consideration for 2024*, Comments of the City of New York (Feb. 24, 2025), at 1, 10.

[14] Case 24-E-0645, *supra*, Comments of the New York Independent System Operator, Inc. (Feb. 24, 2025), at 9.

[15] *See* Case 15-E-0302, *supra*, Competitive Power Benefits for New Yorkers (Mar. 26, 2025).

value to customers."[16] The Report demonstrates that the State's transition to a competitive market has resulted in significant benefits to consumers through lower power costs, declining emissions, and economic growth. These benefits would be jeopardized if competitive processes are not applied to regional transmission projects, such as the Project.

There is adequate time to competitively solicit proposals to address any of the potential needs contemplated by the Petition. NYPA contends that a project selected to meet an identified Public Policy Transmission Need would not be in service until the early to mid-2030s, but NYPA's claim that the Project will obtain its Public Service Law Article VII approvals and notice to proceed with constructions in May 2025 is highly unlikely.[17] As of the date of these comments, the settlement negotiations in the Article VII case for the Project are on hold, almost certainly putting these targets well out of reach.[18] Moreover, the State has acknowledged that its 2030 goal is not going to be met until potentially 2033 or 2035 due to increased demand from projected electrification and high load economic development, not because of a lack of transmission.[19] Thus, any "urgency" to complete the Clean Path project is an overreach at best, and should not outweigh the Commissions long-established precedent that competitive solicitations ensure the lowest cost for consumers.

[16] *Id*. at 25 (citing *Cost Savings Offered by Competition in Electric Transmission*, The Brattle Group (Apr. 2019), https://www.brattle.com/wp-content/uploads/2021/05/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf).

[17] *See* Petition at Attachment C.

[18] *See* Case 22-T-0558, *Application of New York Power Authority and Clean Path New York LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 178 miles of Transmission Lines and Associated Facilities From Delhi, New York, to Queens, New York*, ALJ Ltr to Parties 1-6-2025 (Jan. 7, 2025) (indicating that "the Applicants have indicated to the settlement parties in this Article VII proceeding that they propose to pause the settlement process for the Clean Path NY project while the PTP process is pending and until that process is complete, including NYPA's solicitation for a co-participant").

[19] Case 15-E-0230, *supra*, CES Biennial Review (With Corrections) (July 8, 2025), at 57.

Accordingly, the Commission should require the use of competitive solicitations for projects required to meet the CLCPA goals to ensure the lowest possible cost to ratepayers.

Respectfully submitted,

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