

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

NOTICE SEEKING FURTHER COMMENT

(Issued October 20, 2023)

In its Order Instituting Process Regarding Zero Emission Target (Order), issued on May 14, 2023, in the above-captioned proceeding, the Public Service Commission (Commission) directed Department of Public Service staff (Staff) to convene a technical conference "to examine the issues and questions, including, but not limited to, those set forth" in the Order.¹

The Order included questions on a range of subjects, including how the Commission might define "zero emissions," a term that appears in section 4 of the Climate Leadership and Community Protection Act and is codified in Public Service Law (PSL) §66-p. Commenters' responses to those questions highlighted several considerations for the Commission in relation to its implementation of a program to ensure that by the year 2040 the statewide electrical demand system will be zero emissions. Informed by the initial round of comments that were submitted on or before August 16, 2023, Staff crafted an additional series of questions for comment. The additional questions prepared by DPS staff are attached hereto.

PLEASE TAKE NOTICE that Staff requests comments from stakeholders on the questions attached hereto. Comments are requested by January 19, 2024, and should be submitted electronically, by going to www.dps.ny.gov, clicking on "File

¹ Order, p. 47.

Search" (located under the "Commission Filings" heading), entering "15-E-0302" in the "Search by Case Number" field, and then clicking on the "Post Comments" box located at the top of the page. Those unable to file comments electronically may mail their comments to the Hon. Michelle L. Phillips, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York, 12223-1350. Comments received will be posted to the Department's website and will be part of the case record.

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

These questions seek to elicit legal interpretations rather than policy considerations, along with reasoning and analysis that supports or cuts against those legal interpretations.

QUESTIONS

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?

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.

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.² Staff asks for further comment on whether DEC's emissions accounting regulations constrain or otherwise inform the

² Order, p. 14.

Commission's definition of the phrase, "by the year [2040] the statewide electrical demand system will be zero emissions."

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.

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"?

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?