STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS OF MULTIPLE INTERVENORS

Dated: May 31, 2022

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of over 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments in response to the Notice Soliciting Comments ("Notice") issued by the New York State Public Service Commission ("Commission") on April 21, 2022, in Case 20-E-0197.[1] The Notice solicits comments on the "Petition of Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, and Rochester Gas and Electric Corporation; Identifying Area of Concern Needs and Recommended Solutions," dated March 8, 2022 ("Petition").[2]

In the Petition, the Upstate Utilities seek Commission authorization to: (a) develop and construct certain proposed transmission projects; (b) utilize regional cost allocation and recovery for said projects, socialized on a load-ratio basis, via the New York Independent System Operator, Inc. ("NYISO") Tariff; and (c) defer for future recovery incremental operating expenses and related taxes associated with investments, return on capital investments (including cost of removal), and depreciation of the proposed transmission projects that, for whatever reason(s), are not recovered through the NYISO Tariff or an existing rate plan. (Petition at 1-2.)

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[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*.

[2] Central Hudson Gas & Electric Corporation ("Central Hudson"), New York State Electric & Gas Corporation ("NYSEG"), Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk"), and Rochester Gas and Electric Corporation ("RG&E") collectively are referred to herein as the "Upstate Utilities."

The proposed transmission projects are incremental to the Upstate Utilities' existing (and sizeable) capital expenditure budgets. The estimated cost of proposed projects designed to prevent any curtailment of existing and projected renewable generation ("No Curtailment Options") is $5.606 billion. (*Id.* at 18-19.) As an alternative, the Upstate Utilities designed projects that would limit materially, but not eliminate fully, curtailment of existing and projected renewable generation ("Limited Curtailment Options") with an estimated cost of $3.899 billion. (*Id.* at 19.) Notably, all projected costs advanced in the Petition are subject to a broad +50%/-25% variance range. (*Id.* at 21, n.50.) Thus, the actual cost of the No Curtailment Options projects and the Limited Curtailment Options projects could be as high as $8.409 billion and $5.849 billion, respectively.

Multiple Intervenors recognizes that the Climate Leadership and Community Protection Act ("CLCPA") establishes aggressive energy and environmental mandates for New York, including the requirement that 70% of the State's electricity consumption come from renewable generation facilities by 2030. N.Y. Pub. Serv. Law § 66-P(2). It also recognizes that the Accelerated Renewable Energy Growth and Community Benefit Act (the "Act") directed the Commission to institute this proceeding to help ensure that renewable generation facilities are developed timely and can deliver their output into the regions of the State where it is needed. Act at § 2. That noted, Multiple Intervenors hereby advances several concerns regarding the Upstate Utilities' Petition.

First, Multiple Intervenors is concerned that some or many of the proposed transmission projects may not be needed or justified fully, either for development now and possibly well into the future. While it is expected that certain proposed projects may be approved for development in this proceeding, due to enormous cost increases under consideration in this and many other proceedings, the Commission must ensure, *inter alia*, that: (a) any and all projects approved for development truly are justified; (b) the estimated costs for each approved project are accurate and reasonable, and are more than offset by estimated benefits; and (c) it is necessary and beneficial to start the development of such projects at this time (as opposed to some future time when additional information will be known). If any of these conditions are not demonstrated to exist now, approval for those proposed projects should be delayed or denied. Importantly, neither the CLCPA nor the Act were intended to create a "blank check" for utilities to expand their existing transmission systems (and rate base) at customer expense, and the public interest demands that the projects proposed in the Petition be scrutinized carefully, and any authorizations issued in response to the Petition should be preliminary in nature.

Second, Multiple Intervenors is concerned about the enormous costs of the proposed transmission projects and their future impact on customers and the competitiveness of electricity costs in New York. The Upstate Utilities all have expanding electric capital expense budgets, and those budgets apparently include neither the Phase 1 transmission projects proposed earlier in this proceeding, nor the projects advanced in the Petition. Moreover, the Commission already has imposed staggering financial obligations on customers to fund a long and growing list of programs and initiatives, not to mention other, larger-scale transmission projects being developed for the primary purpose of facilitating the delivery of renewable generation. Fundamentally, the Commission needs to explain to customers how energy in New York can remain affordable given the endless spending that it is authorizing.

ARGUMENT

POINT I

THE COMMISSION SHOULD REFRAIN FROM AUTHORIZING EXPENDITURES ON ELECTRIC TRANSMISSION PROJECTS THAT ARE NOT TRULY NECESSARY AT THIS TIME

The Upstate Utilities have proposed numerous, new transmission projects in their Petition. Irrespective of whether the No Curtailment Options or Limited Curtailment Options groups of projects are considered, their total cost to customers would be many billions of dollars, which may be understated given the reliance on what appear to be preliminary cost estimates that are subject to a very generous +50%/-25% variance range. (Petition at 18-19 and 21, n.50.) Multiple Intervenors is concerned that some – or perhaps many or all – of the proposed projects may not be needed at this time, or ever, and that any rush to approve them absent critical regulatory scrutiny would result in the needless waste of scarce customer funds. Accordingly, the Commission should refrain from authorizing expenditures on electric transmission projects that are not truly necessary at this time.

In the Petition, the Upstate Utilities rely upon the Act in support of their proposed transmission projects. (*See*, *e.g.*, Petition at 4-5.) Significantly, however, the Act is not intended to provide the Commission, or the State's electric utilities, with a blank check. Proposed capital projects must be shown to be necessary or appropriate to achieve CLCPA targets. Act at § 7(3). Even if a project is determined to be necessary, that does not mean that it must be undertaken immediately or in the very-near future. In fact, a key intent of the Act is to "enable the state to meet CLCPA targets in an orderly and cost-effective manner." *Id.* at § 7(2).

Multiple Intervenors does not possess the requisite resources to evaluate in detail the many transmission projects proposed in the Upstate Utilities' Petition. For such evaluation, Multiple Intervenors – and other customers – rely upon the expertise of the Commission and New York State Department of Public Service Staff ("Staff"). In utility rate proceedings, proposed capital projects – even ones with estimated costs that are tiny fractions of the projects proposed in the Petition – typically are subject to rigorous review by Staff, and are the subject of extensive written discovery, as well as responsive testimony by Staff, and, sometimes, other parties. Thereafter, proposed utility capital projects and budgets become the subject of multi-party settlement negotiations and/or evidentiary hearings prior to Commission review. Expenditures proposed via the Petition should be accorded a similar, thorough review by Staff.

Moreover, the Commission typically does not pre-approve large expenditures by utilities.[3] Rather, the Commission historically has approved capital expenditure budgets for utilities, in rate proceedings, and then it is incumbent upon the utilities subsequently to demonstrate that expenditures for which cost recovery from customers was sought were incurred prudently. Here, based upon the Petition, the Upstate Utilities effectively are seeking pre-approval from the Commission for potentially as much as $8.409 billion in future expenditures (*i.e.*, the "No Curtailment Options" projects are estimated to cost $5.606 billion subject to a +50% variance), which would be recovered from customers (plus a return on equity). Multiple Intervenors

[3] *See*, *e.g.*, Case 90-E-0775, *Consolidated Edison Company of New York, Inc.*, *Long Island Lighting Company and Orange and Rockland Utilities, Inc. – Joint Petition for Approval of Long-Term Hydro Quebec Firm Power Purchase Contracts*, Order Accepting Contracts for Filing and Denying Petition (issued December 10, 1990) at 6-9 (declining to grant utilities pre-approval of a power purchase contract); Cases 07-E-1507, *et al*, *Proceeding on Motion of the Commission to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process*, Order Initiating Electric Reliability and Infrastructure Planning (issued December 24, 2007) at 26 (declining to pre-approve contracts before their details were known).

questions whether the Commission should pre-approve, at this time, the recovery from customers of many billions of dollars to fund the costs of transmission projects proposed to facilitate the future siting of renewable generation projects that might not ever be developed, or might be developed at different times and/or in different locations than what the Upstate Utilities now anticipate.

As the Commission is well aware, the mere fact that renewable generation facilities have been proposed in certain locations does not mean that they actually will be developed, or be developed at any time proximate to initial estimates. For instance, the Commission recently adjusted downward the near-term Tier 1 Renewable Energy Credit ("RECs") obligations imposed on Load-Serving Entities under the Clean Energy Standard due to a shortage of available RECs attributable to delays in the development of renewable generation facilities for a variety of reasons.[4] Moreover, within a matter of weeks in April 2022, 318 solar projects in the United States were canceled or delayed because of a federal investigation as to whether Chinese companies are circumventing U.S. tariffs by moving components for solar panels through four Southeast Asian countries.[5] That investigation still is continuing into May, and The Washington Post reported

[4] *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 Clean Energy Standard Load Serving Entity Obligations and Establishing the 2024 Obligation (issued March 16, 2022) at 10-11 (citing a "significant shortage of Tier 1 RECs" due to "ongoing siting and interconnection delays, supply chain shortfalls and labor shortages due to the COVID-19 pandemic").

[5] *See, e.g.*, The New York Times, *Solar Industry 'Frozen' as Biden Administration Investigates China*, April 29, 2022, available at https://www.nytimes.com/2022/04/29/climate/solar-industry-imports.html.

recently that Biden Administration officials are warning that it “has put the domestic solar industry in peril.”[6]

The multiple causes for the delays in renewable generation development may – or may not – be resolved expeditiously. The point is, notwithstanding well-intentioned efforts, predicting when, where, and how much renewable generation actually will be developed is fraught with difficulties and, as the Upstate Utilities concede, the specific transmission projects proposed in the Petition are not related, or needed in response, to customer load. (*See* Petition at 32.) Thus, the Commission should proceed extremely cautiously before committing many billions of customers’ dollars to a major transmission build-out to facilitate renewable generation facilities that may not be developed when, where, and/or in the quantities anticipated.

Frankly, if, *arguendo*, the Commission is inclined to pre-approve any of the Upstate Utilities’ proposed transmission projects, such approval should be on a preliminary basis only, and subject to additional (and updated) justifications for each individual project, as well as the submission and regulatory review of far more detailed and refined cost estimates. As detailed, *supra*, there presently is tremendous uncertainty as to if and when certain proposed renewable generation facilities actually will be developed. Accordingly, the analyses underlying the Upstate Utilities’ proposed transmission projects should be updated with the most-current information possible before billions of dollars in customer funds are committed in this proceeding. Additionally, the Commission should not be pre-approving major transmission projects costing in the multiple billions of dollars based upon preliminary cost estimates with an enormous +50%/-25% variance range.

[6] *See* The Washington Post, *White House alarmed that Commerce probe is ‘smothering’ solar industry*, May 7, 2022, available at https://www.washingtonpost.com/business/2022/05/07/auxin-solar-projects-frozen/.

Accordingly, the Commission should refrain from authorizing expenditures in the billions of dollars on proposed transmission projects that are not truly necessary at this time. If, *arguendo*, the Commission is inclined to grant pre-approval to certain projects, it should be on a preliminary basis, and be subject to substantial regulatory scrutiny of updated analyses justifying the proposed expenditures, as well as far more detailed and refined cost estimates.

POINT II

THE COMMISSION SHOULD REFRAIN FROM PLACING FURTHER UNNECESSARY, MATERIAL UPWARD PRESSURE ON ELECTRIC RATES AND PRICES

Multiple Intervenors is very concerned with the potential cost implications of the major transmission projects proposed in the Upstate Utilities' Petition on customers throughout the State. Energy costs already are exceedingly high in New York, and the proposed projects – which are not needed to maintain reliability or meet customer load – will exacerbate the State's lack of competitiveness with respect to electric rates and prices. Moreover, the potential costs of the proposed projects should not be evaluated in isolation; the expenditures should be assessed with consideration of the Upstate Utilities' expanding electric capital expenditure budgets, as well as proposed Phase 1 projects; several major, public policy-driven transmissions projects; and an ever-increasing list of Commission-approved programs and initiatives that customers are being required to fund.

Initially, it bears emphasizing that the costs of the transmission projects proposed in the Petition are enormous. The Upstate Utilities estimate that the costs of No Curtailment Options projects and Limited Curtailment Options projects would be $5.606 billion and $3.899 billion, respectively. (Petition at 18-19.) Factoring in the +50%/-25% variance range utilized by the Upstate Utilities (*id.* at 21, n.50), those costs could sky-rocket to $8.409 billion and $5.849 billion, respectively. If and when developed, recovery of those costs – and a return thereon – from customers would occur over many decades, thereby potentially driving up electricity prices materially during that period.[7]

In addition to seemingly annual electric delivery rate increases, each of the Upstate Utilities has a Commission-approved electric rate plan with sizeable capital expenditure budgets. For instance, Central Hudson's rate plan provides for the following electric capital expenditure budgets (excluding common capital expenditures):

2021	$91.718 million;	2022	$104.091 million;
2023	$120.258 million; and	2024	$108.049 million.[8]

NYSEG's rate plan provides for the following electric capital expenditure budgets (excluding common capital expenditures):

2020	$365.144 million;	2021	$472.773 million;
2022	$521.610 million; and	2023	$530.264 million.[9]

[7] The Upstate Utilities also are not the only New York State electric utilities proposing Phase 2 projects in this proceeding. For instance, Consolidated Edison Company of New York, Inc. ("Con Edison") recently filed a petition herein seeking Commission pre-approval to develop the "Brooklyn Clean Energy Hub" at an estimated cost of $1 billion. Case 20-E-0197, *supra*, Petition of Consolidated Edison Company of New York, Inc. for Approval to Recover Costs of Brooklyn Clean Energy Hub (dated April 15, 2022) at Exhibit A, pages A-5 – A-6.

[8] *See* Cases 20-E-0428 and 20-G-0429, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service*, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (issued November 18, 2001), Attachment 1 (Joint Proposal) at Appendix X.

[9] *See* Cases 19-E-0378, 19-G-0379, 19-E-0380, and 19-G-0381, *Proceeding on Moton of the Commission as to the Rates, Charges, Rules, and Regulations of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Electric and Gas Service,* Order Approving Electric and Gas Rates in Accord with Joint Proposal, With Modifications (dated November 19, 2020), Attachment 1 (Joint Proposal) at Appendix R, Page 1 of 4.

Niagara Mohawk's rate plan provides for the following electric capital expenditure budgets (including common capital expenditures and excluding costs of removal):

FY22	$680.430 million;	FY23	$724.073 million;
FY24	$826.564 million; and	FY25	$929.228 million.[10]

Finally, RG&E's rate plan provides for the following electric capital expenditure budgets (excluding common capital expenditures):

2020	$319.303 million;	2021	$244.177 million;
2022	$265.202 million; and	2023	$214.367 million.[11]

As the Commission is aware, in addition to the multi-billion dollar proposals advanced in the Petition, several of the Upstate Utilities also are seeking pre-approval of Phase 1 projects in this proceeding. For instance, NYSEG is proposing Phase 1 projects, incremental to its Commission-approved capital expenditure budgets, totaling an estimated $1.944 billion.[12] Similarly, Niagara Mohawk is proposing Phase 1 projects, incremental to its Commission-approved capital expenditure budgets, totaling an estimated $718.945 million.[13] Additionally, the

[10] Cases 20-E-0380 and 20-G-0381, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric and Gas Service*, Order Adopting Terms of Joint Proposal, Establishing Rate Plans and Reporting Requirements (issued January 20, 2022), Attachment 1 (Joint Proposal) at Appendix 1, Schedule 5, Page 1 of 18. (Niagara Mohawk's Fiscal Year, or FY, runs from April 1 through March 31; thus, FY22 refers to the period April 1, 2021 through March 31, 2022.)

[11] *See* Cases 19-E-0378, 19-G-0379, 19-E-0380, and 19-G-0381, *supra*, Order Approving Electric and Gas Rates in Accord with Joint Proposal, With Modifications, Attachment 1 (Joint Proposal) at Appendix R, Page 3 of 4.

[12] Case 20-E-0197, *supra,* Petition of New York State Electric & Gas Corporation for Approval of Phase 1 Local Transmission Projects and Associated Cost Recovery ("NYSEG Petition") (dated December 23, 2021) at 7.

[13] Case 20-E-0197, *supra*, Petition of Niagara Mohawk Power Corporation d/b/a National Grid for Cost Recovery of Phase 1 Local Transmission Projects (dated November 8, 2021) at 17-18.

cost estimates advanced by NYSEG and Niagara Mohawk appear to be preliminary in nature, as they also are subject to a very-wide +50%/-25% variance range.[14] Thus, while NYSEG and Niagara Mohawk are seeking Commission authorization to spend an estimated $2.663 billion in Phase 1 projects, the actual cost thereof could be as high as $3.994 billion.

In addition to the cost of the Upstate Utilities' electric rate plan capital expenditure budgets and Phase 1 proposals, the Phase 2 proposals advanced in the Petition and separately by Con Edison, and the multiple, ongoing public policy-driven transmission projects already underway, the Commission should consider the substantial present and future costs being imposed on customers due to a growing list of programs and initiatives. For example, customers already are committed to funding billions of dollars in transmission upgrades to facilitate the deliverability of renewable energy. Specifically, customers are or soon will be responsible for the costs of (i) the "AC Transmission" projects, (ii) the "Western New York" transmission projects, and (iii) the recently-solicited, "Long Island" transmission project(s). Each of these public policy-driven transmission projects were justified, in material part, on the need to increase the deliverability of renewable energy.[15]

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[14] Id. at 17 and n.29; NYSEG Petition at 7.

[15] *See*, *e.g.*, Case 12-T-0502, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades*, Order Addressing Public Policy Transmission Need for AC Transmission Upgrades (issued January 24, 2017) at 18-19 (justifying the "AC Transmission" projects on a need to increase transmission capacity to allow renewable generation facilities to deliver their energy to downstate load centers) ; Case 14-T-0454, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration*, Order Addressing Policy Requirements for Transmission Planning Purposes (issued July 20, 2015) at 27 (justifying the "Western New York" transmission projects on increasing deliverability in the region to maximize output from the New York Power Authority's Niagara hydroelectric generation facility and additional imports of renewable energy from the Ontario region); and Case 20-E-0497, *In the Matter of New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2020,* Order Addressing

The Commission should not evaluate the potential costs to customers associated with the Petition, or this proceeding in general, in a vacuum, but, rather, it should do so in conjunction with the numerous other programs and initiatives that customers already are funding and/or will be obligated to fund in the future in furtherance of the CLCPA and related objectives. A listing of those costs related to customer-funded programs and initiatives are set forth in Appendix 1 hereto. For the foregoing reasons, the Commission should refrain from placing further unnecessary, extreme upward pressure on electric rates and prices.

CONCLUSION

For all the foregoing reasons, the Commission should rule upon the Upstate Utilities' Petition in accordance with the positions advanced herein by Multiple Intervenors. Specifically, the Commission should refrain from (i) authorizing expenditures on electric transmission projects that are not truly necessary at this time, or (ii) placing further, material upward pressure on electric rates and prices.

Dated: May 31, 2022
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Respectfully submitted,

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Public Policy Requirements for Transmission Planning Purposes (issued March 19, 2021) at 1-4 (justifying one or more "Long Island" transmission projects to facilitate deliverability of offshore wind generation).

APPENDIX 1

EXAMPLES OF PSC-MANDATED PROGRAMS AND INITIATIVES THAT UTILITY CUSTOMERS ARE OR WILL BE FUNDING OUTSIDE OF THIS PROCEEDING IN FURTHERANCE OF THE CLCPA AND RELATED OBJECTIVES

Set forth below are examples of some – but not all – of the programs and initiatives mandated by the Commission in furtherance of the CLCPA and related objectives that utility customers are and/or will be funding through higher electric and gas rates and prices, not including any of the proposed projects that may be authorized in this proceeding. While Multiple Intervenors recognizes that each of these programs and initiatives are intended to produce certain benefits, the financial impacts of these programs and initiatives are significant, both individually and collectively. Accordingly, when the Commission evaluates the transmission projects proposed by the Upstate Utilities in the Petition, it should not do so in a vacuum. The Commission instead should be cognizant of and consider the costs that already are being imposed and/or are scheduled to be imposed on customers, including, but not limited to, the following:

- Customers are and will be funding out-of-market payments of an indeterminate amount (believed to be in the many billions of dollars) to incentivize the development of new, large-scale renewable generation facilities under Tier 1 of the Clean Energy Standard ("CES").[16]

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[16] *See generally* Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (issued August 1, 2016) at 78-115 (establishing a CES Tier 1 program for new renewable generating resources). The most recently-published prices for CES Tier 1 Renewable Energy Credits ("REC") is $22.47 per REC, available at: https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/LSE-Obligations/2021-Compliance-Year. Inasmuch as renewable generation penetration in New York recently has been under 30%, and must climb

- Customers are and will be funding out-of-market payments of an indeterminate amount (believed to be in the hundreds of millions of dollars) to incentivize the continued operation of existing renewable generation facilities under Tier 2 of the CES.[17]
- Customers are and will be funding out-of-market payments of an indeterminate amount (believed to be many billions of dollars) to incentivize the continued operation of existing nuclear generation facilities under Tier 3 of the CES.[18]
- Customers will be funding out-of-market payments of an indetermined amount (believed to be many billions of dollars) to incentivize the development of incremental transmission and renewable generation to serve New York City under Tier 4 of the CES.[19]

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to 70% by 2030 under the CLCPA, it is anticipated that CES Tier 1 RECs will have a cost well into the billions of dollars during the coming decade.

[17] *See generally* Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard at 17-18, 115-19 (establishing a CES Tier 2 maintenance program for existing renewable generation facilities demonstrating financial need), and Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) at 49-77 (establishing an additional, competitive solicitation component to CES Tier 2 at a maximum incremental cost of $200 million through 2026).

[18] *See generally* Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard at 119-153 (establishing a CES Tier 3 for existing nuclear generating facilities). The first two-year tranche of the 12-year Tier 3 program (encompassing April 1, 2017 through March 31, 2029) relied upon a zero-emission credit ("ZEC") price of $17.48 per ZEC, with ZECs applied to an annual maximum of 27,618,000 MWh (*see id.* at App. E), for a maximum annualized cost of $482,762,640. Thus, the existing, 12-year ZEC program is expected to cost between $5 billion and $7 billion, depending upon the cost of ZECs (which fluctuate) and the output of the State's existing nuclear generation facilities. Moreover, to the extent the CLCPA necessitates the continued operation of those facilities beyond March 31, 2029, the total Tier 3 costs may rise further, possibly significantly.

[19] *See generally* Case 15-E-0302, supra, Order Adopting Modifications to the Clear Energy Standard (issued October 15, 2020) (approving CES Tier 4), Petition filed by New York State Department of Public Service Staff ("Staff") and the New York State Energy Research and Development Authority ("NYSERDA") (dated November 30, 2021) (seeking approval of two proposed CES Tier 4 contracts), Notice Soliciting Comments (dated December 2, 2021) (soliciting comments on the DPS Staff/NYSERDA Petition). The aggregate cost impacts of the two proposed CES Tier 4 contracts are enormous. According to analyses conducted by DPS Staff and

- Customers will be funding out-of-market payments of an indeterminate amount (believed to be many billions of dollars) to incentivize the development of new, offshore wind generation facilities.[20]
- Customers previously were committed to funding a Clean Energy Fund ("CEF") at a cost of over $6 billion.[21] Recently, however, the Commission approved a petition filed by Staff and NYSERDA to increase the CEF budget by $1.474 billion to fund additional incentives for distributed solar.[22]

NYSERDA, the contracts could raise electricity costs by as much as 5.7% on a statewide basis, and as high as 9.9% on customers of Niagara Mohawk. *Id.* Staff/NYSERDA Petition, Appendix C at 26. Staff and NYSERDA also indicate that "impacts on large commercial customers may be up to twice the utility-wide averages." *Id.* Thus, the proposed CES Tier 4 contracts could increase electricity costs for large commercial customers by as much as 11.4% on a statewide basis, and as much as 19.8% within the Niagara Mohawk service territory. *See id.* In April 2022, the Commission approved the proposed CES Tier 4 contracts. *Id*., Order Approving Contract for the Purchase of Tier 4 Renewable Energy Certificates (issued April 14, 2022).

[20] *See generally* Case 18-E-0071, *In the Matter of Offshore Wind Energy*. *See also id.*, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (issued July 12, 2018) at 15-64 (establishing an offshore wind generation target of 2.4 GW by 2030 and authorizing an initial procurement process in support thereof). The CLCPA increased the offshore wind generation target from 2.4 GW by 2030 to 9 GW by 2035. N.Y. Env. Cons. Law § 75-0103(13)(E).

[21] *See generally* Case 14-M-0094, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*. *See also id.*, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) at Appendix H (authorizing customer collections of $6,001,000); and Order Approving Clean Energy Fund Modifications (issued September 9, 2021) at Appendix E (authorizing $3,165,800 in collections from customers from 2021-2029).

[22] *See generally* Case 21-E-0629, *In the Matter of the Advancement of Distributed Solar*, Order Expanding NY-Sun Program (issued April 14, 2022). Thus, separate and apart from all other programs and initiatives, the CEF now has an authorized cost to customers of approximately $7.5 billion.

- Customers are and will be funding utility-administered electric energy efficiency programs at a cost of close to $1.9 billion through 2025, and potentially more thereafter.[23]
- Customers are and will be funding utility-administered gas energy efficiency programs at a cost of close to $900 million through 2025, and potentially more thereafter.[24]
- Customers are and will be funding utility-administered electric heat pump programs at a cost of over $450 million through 2025, and potentially more thereafter.[25]
- Customers are and will be funding incentives to promote electric vehicle infrastructure investments at a cost of over $700 million through 2025, and potentially more thereafter.[26]
- Customers are and will be funding out-of-market payments and utility cost recovery of an indeterminate amount (believed to be substantial) to incentivize the development of new electric storage facilities.[27]

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[23] *See generally* Case 18-M-0084, *In the Matter of a Comprehensive Energy Efficiency Initiative*. *See also id.*, Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020) (hereinafter, "NE:NY Order") at App. A, Table A3 (authorizing statewide spending on utility-administered electric energy efficiency programs of $1,879,114,825 from 2021-2025).

[24] *See id.*, NE:NY Order at App. A, Table A4 (authorizing statewide spending on utility-administered gas energy efficiency programs of $878,716,819 from 2021-2025).

[25] *See id.* NE:NY Order at App. C, Table C1 (authorizing statewide spending on utility-administered electric heat pump programs of $454,318,220 from 2020-2025).

[26] *See generally* Case 18-E-0138, *Proceeding on Motion of the Commission Regarding Electric Vehicle Supply Equipment and Infrastructure*. *See also id.*, Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Programs (issued July 16, 2020) at 68-76 and Appendix B (authorizing statewide spending on EV infrastructure incentives of $700,994,850 through 2025).

[27] *See generally* Case 18-E-0130, *In the Matter of Energy Storage Deployment Program. See also id.*, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018) at 1-5 (establishing a target of 3,000 MW of qualified storage energy systems by 2030, with an interim objective of 1,500 MW of energy storage systems by 2025). The CLCPA

- Customers are and will be funding multiple, large-scale transmission projects outside of this proceeding, at an indeterminate cost (believed to be many billions of dollars), the primary purpose of which are to increase the deliverability of renewable energy to different regions of the State.[28]
- Utility customers are and will be funding Earnings Adjustment Mechanisms ("EAMs") for the benefit of utility shareholders at an indeterminate cost (believed to be in the hundreds of millions of dollars) for the purpose of incentivizing utilities to help achieve certain State clean energy objectives.[29]
- Customers are and will be funding an Electric Generation Facility Cessation Mitigation Program, to compensate municipalities that lose tax base when generation facilities retire due to the transition to a cleaner electric system, at a cost of $112.5 million through 2030.[30]

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incorporates the electric storage target of 3,000 MW by 2030. N.Y. Env. Cons. Law § 75-0103(13)(E).

[28] *See*, *e.g.*, Case 12-T-0502, *supra*, Order Addressing Public Policy Transmission Need for AC Transmission Upgrades at 18-19 (justifying the "AC Transmission" projects on a need to increase transmission capacity to allow renewable generation facilities to deliver their energy to downstate load centers); Case 14-T-0454, *supra*, Order Addressing Policy Requirements for Transmission Planning Purposes at 27 (justifying the "Western New York" transmission projects on increasing deliverability in the region to maximize output from the New York Power Authority's Niagara hydroelectric generation facility and additional imports of renewable energy from the Ontario region); and Case 20-E-0497, *supra*, Order Addressing Public Policy Requirements for Transmission Planning Purposes at 1-4 (justifying future "Long Island" transmission projects to facilitate deliverability of offshore wind generation).

[29] *See generally* Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) at 53-93 (discussing and then mandating the use of EAMs).

[30] *See* Case 20-E-0473, *In the Matter of Developing a Funding Mechanism for the Electric Generation Facility Cessation Mitigation Program*, Order Authorizing Funding for Electric Generation Facility Cessation Mitigation Program (issued February 11, 2021) (establishing a budget of $12.5 million per year through 2030 to be funded by electric customers statewide).

- Utility customers are and will be funding out-of-market payments at an indeterminate cost (believed to be substantial) to incentivize Distributed Energy Resources ("DER") through net energy metering arrangements and "value stack" compensation.[31]

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[31] *See generally* Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources*. *See also id.*, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (addressing, and providing exemptions to, an eventual transition from net energy metering, and also establishing value stack compensation, including non-cost-based incentives for certain DERs).