STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS OF MULTIPLE INTERVENORS

(I.D. No. PSC-37-21-00010-P)

Dated: November 15, 2021

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments in response to the petition filed in Case 15-E-0302 by Independent Power Producers of New York, Inc., New York State Building and Construction Trades Council, and New York State ALF-CIO (collectively, "Petitioners").[1] Petitioners seek a ruling from the New York State Public Service Commission ("Commission") establishing a new competitive program or tier under the Clean Energy Standard ("CES") to encourage the development of zero-emitting electric generating facilities that are not "renewable energy systems," as that term is defined in the Climate Leadership and Community Protection Act ("CLCPA"). Notice of the Petition was published in the September 15, 2021 edition of the *New York State Register* (I.D. No. PSC-37-21-00010-P). For the reasons set forth below, Multiple Intervenors opposes the Petition at this time.

The CLCPA defines renewable energy systems as "systems that generate electricity or thermal energy through the use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity." N.Y. Pub. Serv. Law § 66-p(1)(b). The Petition proposes that the Commission establish a new competitive program to encourage private sector investment

[1] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Petition of Independent Power Producers of New York, Inc., New York State Building and Construction Trades Council and New York State AFL-CIO for the Establishment of a Zero Emissions Energy Systems Program Under the Clean Energy Standard (dated August 18, 2021) (hereinafter, the "Petition").

in a minimum of 1 gigawatt ("GW") of zero-emitting electric generating facilities that are not renewable energy systems (hereinafter, "Non-Renewable Zero-Emissions Facilities"). (Petition at 2, 6-10.) The Petition further proposes that this new competitive program contain certain labor-related requirements, such as prevailing wage, Project Labor Agreement, and "Buy American" provisions. (*Id.* at 10-11.)[2]

Initially, Multiple Intervenors agrees with Petitioners that Non-Renewable Zero-Emissions Facilities likely will be needed in the future to maintain electric reliability. Pursuant to the CLCPA, New York will be relying to an historically unprecedented extent on renewable resources, the vast majority of which generate electricity intermittently.[3] In order to maintain electric reliability when renewable resources are not generating electricity, New York will require a substantial amount of dispatchable, preferably non-emitting, generation in the coming years.

Notwithstanding its general agreement with Petitioners regarding New York's likely future need of Non-Renewable Zero-Emissions Facilities, Multiple Intervenors has a number of concerns regarding the specific relief sought in the Petition. First, the Petition is premature. It simply is not clear that another program dependent upon out-of-market payments – presumably funded by customers – is needed at this time. Pursuant to the CLCPA, the Climate Action Council ("CAC") is scheduled to issue a Draft Scoping Plan by January 1, 2022, and a Final Scoping Plan by January 1, 2023. N.Y. Env. Cons. Law § 75-0103(11), (12)(C). Petitioners rely upon the CLCPA as justification for their proposed relief, but then seek that relief in advance

[2] It is unclear whether the Commission can or should evaluate, mandate the use, and/or regulate the implementation of labor-related provisions, as proposed in the Petition. With all due respect to the Commission, such labor-related provisions are outside the scope of its expertise.

[3] The CLCPA requires, *inter alia*, that by 2030 a minimum of 70% of the State's electric demand be served by renewable energy systems. N.Y. Pub. Serv. Law § 66-P(B)(2). Only certain renewable energy systems (*e.g.*, wind, solar) are considered intermittent.

and outside of the process set forth in that legislation for implementing the CLCPA objectives. Additionally, the New York Independent System Operator, Inc. ("NYISO") actively is examining wholesale market rule changes designed to encourage the development of Non-Renewable Zero-Emission Facilities. If wholesale price signals promote investment in Non-Renewable Zero-Emission Facilities, there may not be a need to create another class of generation facilities dependent upon out-of-market payments.

Second, the Petition does not contain any estimates of what the proposed program to spur the development of Non-Renewable Zero-Emission Facilities might cost, nor does it include any limitations on the magnitude of such cost. If, *arguendo*, the Commission elects to grant the Petition in whole or part, and expects customers to fund the proposed program, it should, at a minimum, consider the proposed program to be a pilot, and limit its potential cost with a hard cap set at a very modest level, thereby reflecting (i) the myriad of other programs and initiatives currently being funded by customers, (ii) rapidly-increasing wholesale electricity and natural gas prices being borne by customers at this time, and (iii) the very-challenging economic conditions caused by the COVID-19 pandemic and its aftermath.

Third, the Petition does not address how the proposed program to spur the development of Non-Renewable Zero-Emission Facilities would be funded. If, *arguendo*, the Commission elects to grant the Petition in whole or part, and expects customers to fund the proposed program, such funding should come from authorized but uncommitted collections related to other programs and initiatives, and not from incremental collections.

Fourth, the Petition does not discuss cost allocation or cost recovery issues. If, *arguendo*, the Commission (i) elects to grant the Petition in whole or part, (ii) expects customers to fund the proposed program, and (iii) directs the imposition of incremental collections from

customers, then the costs of the program should be allocated to utility service classes on the basis of demand, not energy. The perceived need for Non-Renewable Zero-Emission Facilities is due primarily, if not exclusively, to their dispatchable characteristics, in order to maintain reliability as part of an electric system increasingly dependent upon intermittent forms of generation.[4] As such, it would be appropriate to allocate the costs of the proposed program, if implemented and the costs recovered from customers, on a demand basis.[5]

ARGUMENT

POINT I

NEW YORK LIKELY WILL NEED NON-RENEWABLE ZERO-EMISSION FACILITIES THAT ARE DISPATCHABLE AT SOME FUTURE TIME

Petitioners argue that New York likely will need dispatchable Non-Renewable Zero-Emission Facilities in order to preserve electric system reliability. (Petition at 6-10.) For instance, referencing a study commissioned by the NYISO, the Petition states that: "Because wind, solar, and limited-duration energy storage resources will be insufficient to meet electric demand in 2040, the Phase II Climate Study determined that removal of all the existing fossil-fueled generating resources by 2040 in compliance with the CLCPA's 2040 Zero Emission Target will require as much as 30,000 MW of installed capacity of new flexible and dispatchable resources to provide the necessary reliability services that have historically been provided by fossil-fueled

[4] While such generating facilities also would be non-emitting, they are needed for their dispatchability; otherwise, the State simply could depend to an even greater extent on existing renewable technologies.

[5] Following such allocation, cost recovery also should be on a demand basis, at least for service classes where the customers have demand meters.

generating resources." (*Id.* at 7.) While the accuracy of this conclusion is unknown at this time, Multiple Intervenors has no compelling reason to question it and, in fact, generally agrees with Petitioners that, at a future (but presently unknown) time, New York likely will need some (also presently unknown) amount of Non-Renewable Zero-Emission Facilities that are dispatchable. Electric reliability in the State must be maintained (if not strengthened), and dispatchable generation will be needed to address the State's increasing reliance on generation technologies that are intermittent in nature.

Importantly, however, recognizing that a future need likely will exist for Non-Renewable Zero-Emission Facilities does not necessarily mean that the Petition should be granted at this time. As detailed, *infra*, Multiple Intervenors contends that the Petition currently is premature and, therefore, should be denied without prejudice. (*See* Point II.) If, *arguendo*, the Commission elects to approve the proposed program to encourage Non-Renewable Zero-Emission Facilities in whole or part, there are a number of other issues that still would need to be addressed, including, *inter alia*, the potential cost of the program (*see* Point III), the appropriate funding source for the program (*see* Point IV), and if incremental customer collections are envisioned, how said costs should be allocated and recovered (*see* Point V).

POINT II

THE PETITION IS PREMATURE

The Petition seeks approval of a competitive solicitation program – essentially a new tier under the CES – effective July 1, 2022, to encourage development of a minimum of 1 GW of Non-Renewable Zero-Emission Facilities in sufficient time to ensure that such resources are in commercial operation by 2030. (Petition at 6-10.) For several reasons, the relief sought in

the Petition is premature. While it may in the future become advisable, or even necessary, to rely on out-of-market payments to procure generation from Non-Renewable Zero-Emission Facilities, there is no compelling evidence that such time is now.

Initially, there are several potential harms associated with prematurely procuring generation from Non-Renewable Zero-Emission Facilities in this manner. Assuming customers are the funding source for the proposed program, the Commission should resist adding to the existing energy cost burden at this time. Customers already are funding multiple tiers under the CES and a great many other programs and initiatives in furtherance of the CLCPA and related clean energy goals. (*See* Point III, *infra*.) Requiring customers to fund a new obligation earlier than necessary, if it even turns out to be necessary, should be avoided.

In this case, Petitioners are seeking Commission action which assumes that out-of-market payments are needed to ensure that Non-Renewable Zero-Emission Facilities are developed if and when needed, notwithstanding ongoing efforts in the NYISO stakeholder process to encourage their development through market mechanisms that may be less costly to customers. Thus, while the objective sought to be achieved by the Petition may be reasonable, the Commission needs to seriously examine, *inter alia*, whether another competitive solicitation program presumably funded by customers truly is needed at this time.

The Petition contains historical information regarding the CLCPA and some of its provisions. (*See*, *e.g.*, Petition at 3-6.) That legislation does require, *inter alia*, 70% statewide reliance on renewable electricity generation by 2030 and 100% emission-free electricity generation by 2040. N.Y. Pub. Serv. Law § 66-P(2). Petitioners rely on these CLCPA requirements in support of the requested relief. (Petition at 6-10.) Significantly, however, they seek Commission action

in furtherance of CLCPA goals well before the process established by that very legislation has been completed, or arguably even reached the halfway point.

The CLCPA established the CAC. N.Y. Env. Cons. Law § 75-0103. The CAC is tasked with developing a Draft Scoping Plan by January 1, 2022, and a Final Scoping Plan by January 1, 2023. *Id.* at § 75-0103(11), (12)(C). In between issuance of the Draft Scoping Plan and the Final Scoping Plan, the CAC is required to hold public comment hearings on the Draft Scoping Plan and the submission of public comments as part of its requirement to provide "meaningful opportunities for public comment from all segments of the population" that will be impacted by the Final Scoping Plan. *Id.* at § 75-0103(12)(A), (B). None of this has occurred to date. The Petition discusses analyses received by the CAC and recommendations made to the CAC by an advisory panel thereto (*see* Petition at 8-9), yet requests that the Commission adopt a new competitive solicitation program targeting Non-Renewable Zero-Emission Facilities without regard to, *inter alia*, the recommendations in the CAC's upcoming Draft Scoping Plan, the public comment process on the Draft Scoping Plan, and the potentially-revised recommendations contained in the CAC's Final Scoping Plan.[6]

While there appears to be a broadly-recognized need that New York will require a material amount of generation from Non-Renewable Zero-Emission Facilities at some point in the future to maintain electric system reliability in light of CLCPA mandates, the Petition seeks approval of a new program or CES tier reliant upon out-of-market payments. Yet, no

[6] Multiple Intervenors also notes that the 70% renewable penetration and 100% emissions-free mandates still are eight and 18 years away, respectively. This is not to suggest that New York can wait indefinitely before ensuring that sufficient dispatchable generation has been developed to maintain system reliability, but no specific support is proffered in the Petition for the proposed July 1, 2022 effective date.

demonstration has been made that out-of-market payments will in fact be needed to procure such generation, and Multiple Intervenors contends that reliance on market-based mechanisms would be preferable.

Currently, the NYISO is examining how the wholesale electricity markets that it administers may need to be altered to procure the generation mix needed to maintain reliability. For instance, in one recent publication the NYISO reports that one of the ways it will help the State achieve the CLCPA goals is through techniques such as: "Implementing new market mechanisms that encourage investment in renewables and other technologies that support an emission-free grid while maintaining grid reliability."[7] Another recent NYISO report asserts that: "Markets are the most powerful means to drive needed energy infrastructure investment" and touts its focus on "Attracting investment in cutting edge carbon-free resources" and "Rewarding flexibility and responsiveness which balance the availability of wind and solar."[8]

The NYISO and its stakeholders currently are examining numerous potential market rule changes in recognition of CLCPA and the State's changing generation resource mix. A key focus of those efforts is to recognize, and compensate, the value of dispatchable resources, such as Non-Renewable Zero-Emission Facilities. Multiple Intervenors submits that the program proposed in the Petition, which is reliant upon out-of-market payments, likely would be more expensive for customers than reliance on market-based mechanisms. Furthermore, to the extent wholesale market rules send the appropriate price signals, the proposed program may be

[7] NYISO, *The New York ISO & Grid Reliability* (dated February 2021) at 17; available at https://www.nyiso.com/documents/20142/2224547/The-New-York-ISO-and-Grid-Reliability.pdf/1c5987ea-81f5-9db9-615c-16f8201192a7.

[8] NYISO, *Delivering the Grid of the Future – How Markets Support Climate & Policy Goals* at 5; available at https://www.nyiso.com/documents/20142/2225523/How-Markets-Support-Climate-and-Policy-Goals.pdf.

unnecessary. For present purposes, the Commission should consider whether regulatory action is needed now, in advance of the NYISO's continuing efforts to address this future need through market mechanisms.

For the foregoing reasons, the relief sought in the Petition is premature. Multiple Intervenors agrees with Petitioners that generation from Non-Renewable Zero-Emission Facilities likely will be needed at some point in the future, but disagrees that action is required now in advance of (i) the process specified in the CLCPA calling for the CAC's issuance of a Draft Scoping Plan, followed by a meaningful public comment process, and the CAC's issuance of a Final Scoping Plan, and (ii) current and ongoing efforts by the NYISO and its stakeholders to consider and potentially implement market-based mechanisms that encourage the development of Non-Renewable Zero-Emission Facilities.

POINT III

IF, *ARGUENDO*, THE PROPOSED PROGRAM TO ENCOURAGE NON-RENEWABLE ZERO-EMISSION FACILITIES IS APPROVED IN WHOLE OR PART, IT ONLY SHOULD BE IMPLEMENTED AS A PILOT PROGRAM WITH A HARD CAP ON COSTS SET AT A VERY MODEST LEVEL

Petitioners seek Commission approval of a new competitive program or tier under the CES to encourage the development of Non-Renewable Zero-Emissions Facilities. (Petition at 1, 6-10.) The Petition proposes that a minimum of 1 GW of Non-Renewable Zero-Emission Facilities be developed "in sufficient time to ensure these resources will commence commercial operation by 2030." (*Id.* at 10.) Yet, the Petition contains no analysis, or even rough estimates, of the magnitude of out-of-market payments that might be required to encourage the development of at least 1 GW of Non-Renewable Zero-Emission Facilities before 2030. It also fails to propose

any type of limitation or cap on total costs. Absent such a cost cap, the requested Commission approval essentially would constitute a "blank check"; the Commission would be committing funds – presumably customer funds – to procure the development of at least 1 GW of generation assets without any knowledge of the potential maximum cost of such financial obligation.

For their part, customers do not make large purchases (*e.g.*, house, automobile) without knowing the exact or the approximate cost of what they are buying; the Commission similarly should refrain from entering into open-ended financial commitments on behalf of customers without a detailed analysis of the potential costs. Multiple Intervenors also notes that many of the technologies being mentioned for use in Non-Renewable Zero-Emission Facilities – *e.g.*, bioenergy, hydrogen, carbon capture and sequestration – are nascent in their development and use in the electric generation sector. Accordingly, limiting any potential program to encourage their development to a pilot with a hard cost cap set a very modest level would be a prudent means of protecting customers from potentially excessive costs.

Moreover, the cost of many emerging technologies tend to decline over time. Thus, rather than committing scarce customer resources to procuring 1 GW of Non-Renewable Zero Emission Facilities in the very near-future, when the per unit costs may be extremely high, a pilot program with a hard cost cap could prevent or limit such investments until such time that costs start to decline materially.

Most importantly, the Commission should not evaluate the potential costs of Petitioners' proposed program in a vacuum, but, rather, should do so in the aggregate along with other Commission-approved funding obligations. For instance, customers already are funding and/or will be funding a myriad of other programs and initiatives in furtherance of the CLCPA and the State's clean energy objectives. While each of the programs described below is intended to

produce certain benefits, the ability of customers to fund program after program is not unlimited. Examples of existing funding commitments imposed on customers include the following:

- Customers are and will be funding a Clean Energy Fund at a cost of over $6 billion.[9]
- Customers are and will be funding utility-administered electric energy efficiency programs at a cost of close to $1.9 billion.[10]
- Customers are and will be funding utility-administered gas energy efficiency programs at a cost of close to $900 million.[11]
- Customers are and will be funding utility-administered electric heat pump programs at a cost of over $450 million.[12]
- Customers are and will be funding incentives to promote electric vehicle ("EV") infrastructure investments at a cost of over $700 million.[13]

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[9] *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).

[10] *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).

[11] *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).

[12] *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).

[13] *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

- Customers are and will be funding out-of-market payments of an indeterminate amount (believed to be in the billions of dollars) to incentivize the development of new, large-scale renewable generation facilities under Tier 1 of the Clean Energy Standard ("CES").[14]
- 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.[15]
- 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.[16]

Vehicle Infrastructure Make-Ready Program and Other Programs (issued July 16, 2020) at Appendix B (authorizing statewide spending on EV infrastructure incentives of $700,994,850).

[14] *See generally* Case 15-E-0302, *supra*, 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 a little over $22 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 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.

[15] *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 a competitive solicitation component to CES Tier 2, irrespective of financial need, at a maximum incremental cost of $200 million through 2026).

[16] *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

- Customers will be funding out-of-market payments of an indeterminate amount (believed to be substantial) to incentivize the penetration of renewable energy in New York City under Tier 4 of the CES.[17]
- 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.[18]
- Customers will be funding out-of-market payments of an indeterminate amount (believed to be in the billions of dollars) to incentivize the development of new, offshore wind generation facilities.[19]

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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.

[17] *See generally* Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard at 77-103 (establishing a CES Tier 4 focused on New York City, but requiring certain costs to be recovered on a statewide basis).

[18] *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).

[19] *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).

- 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.[20]
- Customers are and will be funding multiple, large-scale transmission projects at an indeterminate cost (believed to be in the billions of dollars) whose primary purpose is to increase the deliverability of renewable energy to different regions of the State.[21]
- Customers are and will be funding Earnings Adjustment Mechanisms for the benefit of utility shareholders at an indeterminate cost (believed to be in the

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

[21] *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 project 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 IESO 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 Public Policy Requirements for Transmission Planning Purposes (issued March 19, 2021) at 1-4 (justifying future transmission projects in and between Long Island and New York City to facilitate deliverability of offshore wind generation).

hundreds of millions of dollars) for the purpose of incentivizing utilities to help achieve certain State clean energy objectives.[22]

- 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.[23]

In addition to the aforementioned customer-funded programs, some of which may be expanded and/or extended in the future at an incremental cost to customers, the Commission also should consider when evaluating the Petition, *inter alia*, (i) rapidly-increasing wholesale electricity and natural gas prices being borne at this time, and (ii) the very-challenging economic conditions caused by the COVID-19 pandemic and its aftermath.[24]

Thus, the potential cost of the proposed program to encourage Non-Renewable Zero-Emission Facilities should not be evaluated in a vacuum, but, rather, in conjunction with all of the other programs and initiatives that customers already are being required to fund.

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[22] *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).

[23] *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 for certain DERs).

[24] With respect to rising wholesale electricity and natural gas prices, the NYISO reported at its Management Committee meeting held on October 27, 2021, that: (a) the September 2021 average year-to-date monthly electricity cost of $45.34 per MWh represented an 84% increase from the comparable period in 2020; and (b) wholesale natural gas prices were up 241.7% year-over-year. *See* NYISO, *CEO/COO Report* (dated October 27, 2021) at Slide 3, available at https://www.nyiso.com/documents/20142/25598577/03%20NYISO%20CEO%20COO%20Report.pdf/68f3e2ab-1383-f4bd-43da-8a371c1726bd.

Accordingly, if, *arguendo*, the program proposed in the Petition to encourage Non-Renewable Zero-Emission Facilities is approved in whole or part, it only should be implemented as a pilot program with a hard cap on costs set at a very modest level.

POINT IV

IF, *ARGUENDO*, THE PROPOSED PROGRAM TO ENCOURAGE NON-RENEWABLE ZERO-EMISSION FACILITIES IS APPROVED IN WHOLE OR PART, THE COMMISSION SHOULD REFRAIN FROM RELYING ON INCREMENTAL CUSTOMER COLLECTIONS

As detailed in Point III, *supra*, customers already are obligated to fund a myriad of programs in furtherance of the CES and other initiatives. The combined cost of these obligations is substantial, and customers also are experiencing significantly-higher wholesale electricity and natural gas prices, as well as the continuing economic effects of the COVID-19 pandemic. Therefore, if, *arguendo*, the Commission is inclined to approve the proposed program to encourage Non-Renewable Zero-Emission Facilities, it should refrain from relying on incremental collections from customers to the greatest extent possible.

Multiple Intervenors submits that now is not the time for the Commission to add to customers' collective energy cost burdens. The economy in New York is not favorable, utility delivery rates are rising at an alarming pace, and a number of the financial obligations to which the Commission has committed customers, detailed *supra*, have yet to even commence (*e.g.*, obligations with respect to Tier 4 of the CES and offshore wind facilities under development). As also detailed *supra*, wholesale electricity prices for the January-September period are up over 84% compared to the comparable period in 2020, and wholesale gas prices are up 241.7% year-over-

year. Thus, even without action by the Commission with respect to the Petition, customers' energy costs have risen, and are likely to continue rising in the coming years.

If, *arguendo*, the Commission is inclined to grant the relief sought in the Petition in whole or part, it should refrain from approving any incremental collections from customers and, instead, utilize alternate funding streams to the maximum extent possible. For instance, the Commission recently accelerated Clean Energy Fund payments from customers;[25] it could utilize collected-but-uncommitted funds and/or already-authorized future collections to fund a proposed program to encourage the development of Non-Renewable Zero-Emission Facilities. New York itself also could fund the program out of the state budget, or allocate a portion of annual Regional Greenhouse Gas Initiative revenues or possible federal aid for such purpose. In short, all conceivable funding options should be tapped and exhausted before imposing yet another, incremental financial obligation on overburdened utility customers.

POINT V

IF, *ARGUENDO*, THE PROPOSED PROGRAM TO ENCOURAGE NON-RENEWABLE ZERO-EMISSION FACILITIES IS APPROVED IN WHOLE OR PART, ANY INCREMENTAL CUSTOMER COLLECTIONS SHOULD BE ALLOCATED AND, WHERE POSSIBLE, RECOVERED ON A DEMAND BASIS

As noted in Point III, the Commission already is requiring customers to fund a number of programs and initiatives through higher delivery rates (including surcharges) and/or commodity prices. As the magnitude of these financial obligations rises, it becomes increasingly important that cost responsibility be allocated equitably, preferably in a manner consistent with

[25] Case 14-M-0094, *supra*, Order Approving Clean Energy Fund Modifications.

cost causation principles. Recovering the cost of certain programs and initiatives volumetrically, if not justified based on cost causation principles, is inequitable and creates and/or exacerbates interclass and intraclass subsidies. For the reasons set forth below, if, *arguendo*, the Commission approves customer funding of a program to encourage Non-Renewable Zero-Emission Facilities, any collections associated therewith should be allocated amongst a utility's respective service classes on the basis of demand, and also recovered on a per kW basis from demand-metered classes.

There is no evidence that Non-Renewable Zero-Emission Facilities are needed at this time, or even in the very near future. Rather, there is a projected need for such facilities to preserve electric reliability later in, or possibly at the end of, this decade, as the State becomes increasingly reliant upon renewable generation facilities that are intermittent in nature. To the extent Non-Renewable Zero Emissions Facilities are needed for reliability purposes, they are akin to transmission assets, which routinely are allocated at the retail level on a demand basis. Moreover, the Commission currently is allocating costs associated with renewable generation facilities (*e.g.*, wind, solar) on an energy basis, through higher commodity prices that reflect the mandatory purchase of renewable energy credits by load serving entities. Inasmuch as Non-Renewable Zero-Emission Facilities are expected to be needed during periods when renewable generation facilities are not producing electricity, it makes sense – and is equitable – to allocate certain generation-related costs on a non-energy (*i.e.*, demand) basis.[26]

[26] When the State's regulated electric utilities owned generation assets prior to divestiture, those costs always were allocated on a blended basis, with certain costs recovered on an energy basis and other costs recovered on a demand basis. Now that customers are funding out-of-market payments for renewable resources of all types, those costs have been recovered solely on an energy basis, which is inconsistent with cost-of-service principles. Relying exclusively or predominantly on an energy-based allocation has the effect of recovering a disproportionate share of the costs from high-load-factor customers, which is ironic in that these generally are the most efficient

Accordingly, if, arguendo, the Petition is granted in whole or part and the Commission relies on incremental collections from customers – notwithstanding Multiple Intervenors' opposition thereto – such collections should be allocated to and, where possible, recovered from customers on a demand basis.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to rule on the Petition in a manner consistent with these Comments. The Petition is premature and, therefore, should be denied, without prejudice, at this time. If, *arguendo*, the Commission elects to approve the proposed program to encourage Non-Renewable Zero-Emission Facilities in whole or part, it should: (a) examine existing customer cost burdens and treat such program as a pilot with a hard cap on costs set at a modest level; (b) utilize funding sources other than incremental collections from customers; and (c) to the extent such decision results in incremental customer costs, allocate and, where possible, recover those costs on a demand basis.

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Respectfully submitted,

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consumers of energy and the types of customers the Commission should be maximizing efforts to retain in the State.