

**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 ON
PROPOSED TIER 4 CONTRACTS**

Dated: February 7, 2022

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PRELIMINARY STATEMENT

Pursuant to the Notice Soliciting Comments (“Notice”) issued by the New York State Public Service Commission (“Commission”) on December 2, 2021, Multiple Intervenors hereby submits its Comments in Case 15-E-0302, pertaining to the Clean Energy Standard (“CES”).¹ Multiple Intervenors is an unincorporated association of over 50 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

In the Notice, the Commission solicits comments on a petition filed jointly by New York State Department of Public Service Staff (“Staff”) and the New York State Energy Research and Development Authority (“NYSERDA”) on November 30, 2021 (hereinafter, the “Petition”), seeking Commission approval of two contracts for the purchase of Tier 4 Renewable Energy Credits (“RECs”). The proposed contracts relate to the following projects: (a) the Clean Path New York (“CPNY”) Project; and (b) the Champlain Hudson Power Express (“CHPE”) Project.

For the reasons set forth herein, the Commission should evaluate carefully the prohibitive potential cost impacts of the proposed contracts on electricity customers and take steps to mitigate such impacts. As detailed herein, the proposed cost impacts stemming from the contracts are excessive and would harm customers statewide. Indeed, based on information provided in the Petition, discussed *infra*, large non-residential customers located Upstate could experience electric cost increases of up to 20%, or more, due solely to these contracts. The resulting, long-term harm to the Upstate economy, and efforts to attract and retain jobs in the region, could be devastating. Moreover, when the potential cost impacts are considered in the

¹ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*.

aggregate with the myriad of financial obligations already being imposed on customers due to other programs and initiatives, their imposition – particularly to large non-residential customers attempting to conduct business Upstate – could be unsustainable. In addition, the Commission, and the State, have to find ways to prevent such untenable future cost increases from being loaded onto the backs of energy customers.

If, *arguendo*, one or both contracts are approved in some form, the Commission needs to reconsider and then modify the prescribed methodologies for allocating and recovering costs emanating from these public policy-driven transmission projects. Those methodologies are inequitable given the facts and circumstances presented here. They also are inconsistent with basic principles of cost causation and beneficiaries pay, as well as prior Commission rulings on how the costs of public policy-driven transmission projects should be allocated throughout the State.

A. The CPNY Project

The CPNY Project includes a new 174-mile, 1,300 MW high-voltage direct current (“HVDC”) transmission line from a withdrawal point near Fraser Substation in Delaware County, which is located in New York Independent System Operator, Inc. (“NYISO”) Zone E (Mohawk Valley), to the injection point at the Rainey Substation in Queens, which is located in NYISO Zone J (New York City). (Petition at 17.) The resource portfolio includes wind and solar resources, as well as storage and Unforced Delivery Rights. (*Id.* at 18-19.) The CPNY Project team includes Clean Path New York LLC, the New York Power Authority (“NYPA”), and Forward Power. (*Id.* at 3, 19.)

The term of the contract for the CPNY Project is 25 years, with an anticipated Commercial Operation Date (“COD”) of June 30, 2027. (*Id.* at 20.) The bid quantity is 7,870,865 MWh per year, and the nominal strike price is a fixed \$129.75 per MWh. (*Id.*) Thus, the contract

would ensure that the CPNY Project team realizes potential revenues of up to \$1,021,244,733.75 per year for 25 years, a substantial portion of which would be borne by electric customers forced to fund required Tier 4 REC purchases by load-serving entities (“LSEs”).

B. The CHPE Project

The CHPE Project includes a new 375-mile, 1,250 MW HDVC transmission line from a withdrawal point at the Hertel Substation in La Prairie, which is located in Quebec, Canada, to the injection point at the Astoria Annex Substation in Queens (NYISO Zone J). (Petition at 22.) The majority of the proposed transmission line would be located in New York (339 miles), and a portion of it would be located in Quebec (36 miles). (*Id.*) The resource portfolio is comprised of hydropower in Quebec, and H.Q. Energy Services (U.S.) Inc. (“HQUS”) has agreed to add 4 TWh of new wind or solar energy annually to its resource mix. (*Id.*) In addition to HQUS, the CHPE Project team includes Transmission Developers (TDI, a The Blackstone Group, Inc. portfolio company), which is the collective term for CHPE LLC, the owner of the CHPE Project, together with TDI-USA, the developer of the CHPE Project, and CHPE Properties, Inc., a New York transportation corporation, as well as their predecessor entities. (*Id.*)

The term of the CHPE Project contract is 25 years, with an anticipated COD of December 15, 2025. (*Id.* at 24.) The bid quantity is 10,402,500 MWh per year, and the nominal strike price is \$97.50 per MWh, escalating at 2.5% year. (*Id.*)² Thus, the contract would ensure that the CHPE Project team realizes potential revenues of up to \$1,014,243,750 per year, escalating at 2.5% annually for 25 years, a substantial portion of which would be borne by electric customers forced to fund required Tier 4 REC purchases by LSEs.

² With the 2.5% annual price escalator, the contract for the CHPE Project will become more expensive than the contract for the CPNY Project in Contract Year 13, and hit a maximum price of \$176.36 per MWh in Contract Year 25. (*Id.*, Appendix B at 15-16.)

C. Summary of Multiple Intervenors' Positions

Multiple Intervenors understands that the Climate Leadership and Community Protection Act ("CLCPA") mandates achievement of an aggressive 70% renewable penetration target by 2030. Multiple Intervenors generally supports cost-effective efforts to decarbonize the State's electric system, and has no objections to the stated goal of reducing emissions associated with electricity generation in Zone J. That noted, it is not at all clear that the contracts proposed in the Petition constitute the most cost-effective means of achieving CLCPA mandates. Moreover, the bottom line is that the resulting costs are prohibitive, both in isolation and in conjunction with all of the other, numerous financial burdens being imposed on customers, and those impacts must be addressed.

New York's economy is struggling – particularly Upstate – and still is reeling from the effects of the Covid-19 pandemic. Moreover, as set forth in detail below, the Commission recently has approved a very expansive list of customer-funded programs and initiatives on top of "base" rates, the total impacts of which have yet to be realized, but already are quite substantial and will continue to grow. To now impose yet another, huge burden on customers – potentially as high as a 20% (or more) electric cost increase to non-residential customers located in the Upstate region in the first year of operation – would be extremely damaging. The Commission must find ways to reduce, by a significant amount, the impacts of the contracts proposed in the Petition.

If, *arguendo*, after careful consideration of their impacts on customers, the Commission approves one or both contracts, it has a duty and obligation to ensure that the resulting costs are allocated to and recovered from customers in a fair and equitable manner. Here, the transmission projects at issue unquestionably are being developed in furtherance of a public policy

goal: providing more renewable power to customers located in Zone J. Upstate customers would not realize any direct economic benefits associated with operation of the transmission projects.

On multiple occasions, the Commission has ruled that the costs of public policy-driven transmission projects should be allocated in accordance with beneficiaries pay principles. As detailed, *infra*, such rulings have led to Commission adoption of a cost allocation methodology whereby 75% of the costs are allocated to the economic beneficiaries of the transmission project and 25% of the costs are allocated statewide on a load-ratio basis (in recognition of certain anticipated statewide benefits). Here, notwithstanding that the preponderance of benefits associated with the two proposed transmission projects would inure to Zone J customers, the Commission currently would cause 100% of the costs to be allocated statewide on a load-ratio basis. This incongruous determination would result in cost impacts to Upstate that NYSERDA and Staff project would be substantially higher than – and potentially double – the impacts that would be experienced by customers located in Zone J. Under the facts and circumstances presented here, implementation of such an allocation would be highly inequitable, and potentially devastating to the Upstate economy, and should be avoided.

Moreover, the Commission needs to address the manner in which Tier 4 costs, as well as other policy-driven costs, are assessed and ultimately recovered from customers. Typically, when utilities seek to recover the costs of transmission-related expenses in rate proceedings, such costs are allocated to service classes on the basis of demand, consistent with cost causation principles. As addressed, *infra*, however, because the costs of Tier 4 contracts are set to be allocated and recovered solely on an energy basis, high-load-factor customers would bear a disproportionate share of the costs. In fact, Staff and NYSERDA acknowledge in the Petition that the impacts on large non-residential customers could be twice as high as utility-wide averages.

(Petition, Appendix C at 26.) Such an outcome similarly would be highly inequitable and also should be avoided.

ARGUMENT

POINT I

THE COMMISSION SHOULD EVALUATE CAREFULLY THE PROHIBITIVE COST IMPACTS OF THE CONTRACTS PROPOSED IN THE PETITION AND SEEK TO AMELIORATE THEM

The contracts proposed in the Petition, if approved by the Commission, would be extremely harmful to customers, particularly in the Upstate region, both in isolation and when the projected cost impacts are evaluated in the aggregate with the myriad of other programs and initiatives that customers are being required to fund.³ Overburdened customers, who already are experiencing ever-increasing electric delivery rates, as well as commodity prices that nearly doubled in 2021 as compared to 2020,⁴ simply cannot afford these contracts as proposed, especially given the fragile state of the economy suffering from the continuing impacts of the Covid-19 pandemic.

³ For purposes of these Comments, the Upstate region refers to the portions of the State served by the following electric utilities: Central Hudson Gas & Electric Corporation (“Central Hudson”), New York State Electric & Gas Corporation (“NYSEG”), Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), and Rochester Gas and Electric Corporation (“RG&E”).

⁴ See NYISO, *NYISO CEO/COO Report* (dated January 26, 2022) at 5th Slide, Slide B (indicating that the statewide average wholesale cost of energy and ancillary services increased by over 85% in calendar year 2021 as compared to calendar year 2020); available at <https://www.nyiso.com/documents/20142/27895094/03a%20NYISO%20CEO-COO%20MC%20Report.pdf/a693ca32-e5c2-ce5f-3e84-6a42a6b5a4f4>. Multiple Intervenors also notes that wholesale electricity prices in January 2022 were substantially higher than the average electricity price in 2021.

As detailed, *supra*, both contracts essentially guarantee over \$1 billion in annual revenues for the selected developers, only a modest portion of which is likely to come from NYISO-administered wholesale markets. Indeed, the contract prices far exceed projected energy prices, resulting in very-expensive Tier 4 REC costs that would be imposed on customers. The Commission needs to evaluate these proposed costs very carefully – both in isolation and in conjunction with all other costs being imposed on customers.

A. In Isolation, the Proposed Contracts Would Be Prohibitively Expensive for Customers

Under certain scenarios, Staff and NYSERDA project that the first year bill impacts of the proposed contracts could be as high as 5.7% statewide in their first year of operation. (Petition, Appendix C at 21, 26.) Notably, unlike *delivery* impacts that may flow from a utility rate proceeding, the 5.7% projected potential impact is with respect to *total* electric costs, *i.e.*, including both delivery and commodity. The fact that these two contracts could cause electricity bills to increase by as much as 5.7% statewide should be a huge concern to the Commission.⁵

Based on the proposed socialization of Tier 4 costs (addressed *infra*), higher impacts are projected for customers of Upstate utilities. The Petition notes explicitly that customers served by Upstate utilities would experience higher percentage bill impacts due to the

⁵ In utility rate proceedings, proposed expense items in the hundreds of thousands of dollars – and sometimes less – often are the subject of information requests, direct testimony and exhibits, cross-examination at hearings, and post-hearing briefs. Inasmuch as the contracts proposed in the Petition could cost customers \$10 billion or more over their 25-year terms, one would hope that the Commission’s review and evaluation of them would be extremely detailed and critical, and also account for the plethora of other financial commitments that have been or will be imposed on electric customers in the coming years. The Commission has a responsibility to ensure that the cost of electric service is just and reasonable, and not the cause of widespread job losses as energy-intensive businesses relocate due to costs in New York spiraling out of control.

proposed contracts than customers located in the Downstate region. (*Id.* at 25.) In fact, the projected potential first-year impacts to Upstate customers are extraordinary:

Central Hudson	6.5%
NYSEG	8.6%
National Grid	9.9%
RG&E	7.5%

(*Id.* at 26.)⁶

Importantly, the enormous impacts depicted above are *average* impacts for each utility’s customers. Due to the proposed imposition and recovery of Tier 4 costs based entirely on energy consumption (also addressed *infra*), non-residential customers with high-load-factors would experience much larger impacts. The Petition acknowledges that because the costs would be “allocated across utilities and customers by kWhs, the % bill impacts will be greater for those customers that have higher consumption load factors.” (*Id.* at 25.) The Petition further acknowledges that the “impacts on large commercial customers *may be up to twice the utility-wide averages.*” (*Id.* at 26; emphasis added.)

If the utility-specific projected potential first-year impacts are doubled – as expected for large commercial customers due to the energy-based cost recovery methodology

⁶ Multiple Intervenors acknowledges that the actual customer cost impacts related to the two contracts proposed in the Petition may be more or less than those cited herein, depending on future circumstances. For example, New York City has committed to purchase more Tier 4 RECs than it otherwise would be obligated to do under existing Commission policy. Moreover, there is a possibility that a voluntary market for Tier 4 RECs will develop in response to New York City Local Law 97, which would reduce the mandatory obligations on captive utility customers. That noted, there also is at least the possibility that the customer cost impacts reflected in the Petition will prove to be understated. Because it is exceedingly difficult, if not impossible, to forecast electricity market prices and conditions accurately many years into the future, Multiple Intervenors is relying primarily herein upon the highest potential cost impacts calculated by Staff and NYSERDA that were included in the Petition. It is possible that the actual future impacts may be less, but still be quite impactful and detrimental to customers and the Upstate economy.

being employed currently – then such customers being served by Upstate electric utilities could be exposed to the following total electric cost impacts:

Central Hudson	13.0%
NYSEG	17.2%
National Grid	19.8%
RG&E	15.0%

Such potential impacts would be prohibitive and potentially crippling for the Upstate economy.⁷

The two contracts proposed in the Petition are enormously-expensive and would have significant, negative consequences on the cost of electric service in New York, particularly in the Upstate region (and particularly to Upstate businesses). Accordingly, the Commission should take these impacts into account and make modifications to reduce the impacts.

B. The Extreme Cost Impacts of the Proposed Contracts Should Not Be Evaluated in a Vacuum But, Rather, in Conjunction With the Numerous Other Financial Obligations Being Imposed on Electric Customers

In addition to evaluating the costs – and the cost impacts on customers – of the two contracts proposed in the Petition, the Commission needs to start evaluating proposals that require incremental customer funding in the aggregate, in conjunction with the numerous other programs and initiatives that customers already are being required to fund. The extreme customer impacts summarized *supra*, which were provided by the Petitioners, should not be evaluated in a vacuum, as if they represented the only significant cost that potentially would be imposed on customers.

⁷ Moreover, it is unclear whether the Petition's use of large *commercial* customers in the above-quoted passage is intended also to encompass large *industrial* customers, who often operate at materially-higher load factors than large commercial customers. If not, then large industrial customers could be subjected to even greater impacts than the doubling of utility-wide impacts depicted above that are anticipated for large commercial customers. As it routinely does in rate proceedings, the Commission should evaluate the potential cost impacts under various scenarios to customers of all different types and sizes before ruling upon the proposed contacts.

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 these programs and initiatives is intended to produce certain benefits, the ability of customers to fund incremental expense after incremental expense is not unlimited. Examples of existing funding commitments imposed on customers separate and apart from CES Tier 4 obligations include – but are 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 CES.⁸
- 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.⁹

⁸ 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 \$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 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.

⁹ 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, irrespective of financial need, at a maximum incremental cost of \$200 million through 2026).

- 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.¹⁰
- 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.¹¹
- Customers already are committed to funding a Clean Energy Fund (“CEF”) at a cost of over \$6 billion.¹²

¹⁰ 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.

¹¹ 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).

¹² 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).

- Staff and NYSERDA recently filed a petition that currently is pending before the Commission seeking to increase the CEF budget by \$1.474 billion to fund additional incentives for distributed solar.¹³
- 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.¹⁴
- 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.¹⁵
- 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.¹⁶

¹³ See generally Case 21-E-0629, *In the Matter of the Advancement of Distributed Solar*, Filing by Staff and NYSERDA entitled, “New York’s 10 GW Distributed Solar Roadmap: Policy Options for Continued Growth in Distributed Solar” (dated December 17, 2021). According to this filing, the proposal could result in 2024 impacts for National Grid commercial and industrial customers of 3.14%. *Id.* at 81.

¹⁴ 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).

¹⁵ 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).

¹⁶ 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).

- 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.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 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.¹⁹
- Customers are and will be funding multiple, large-scale transmission projects at an indeterminate cost (believed to be many billions of dollars) whose primary

¹⁷ 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).

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-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).

purpose is to increase the deliverability of renewable energy to different regions of the State (similar to the transmission projects proposed in the Petition).²⁰

- Customers may be required to fund utility local transmission and distribution upgrades on a widespread basis (believed to be in the many billions of dollars) in furtherance of CLCPA targets.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 hundreds of millions of dollars) for the purpose of incentivizing utilities to help achieve certain State clean energy objectives.²²

²⁰ 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 NYPA'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).

²¹ See generally 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*, Order on Phase 1 Local Transmission and Distribution Project Proposals (issued February 11, 2021). See also *id.*, Filing by National Grid (dated November 8, 2021) (proposing \$718.945 million in compliance projects), Filing by NYSEG (dated December 23, 2021) (proposing \$1.944 billion in compliance projects).

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).

- 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 and initiatives, 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

Based on financial commitments already imposed on customers by the Commission, there are very real questions as to, *inter alia*, (i) whether customers can afford these ever-increasing obligations, (ii) the impacts that rising electric costs will have on the State’s economy and competitive position vis-à-vis other states and countries in terms of attracting and retaining energy-intensive businesses, jobs, and related capital investments, and (iii) the impact of

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 January 26, 2022 that: (a) the average cost of energy and ancillary services in New York in 2021 was \$47.59, compared to \$25.70 per MWh in 2020; and (b) natural gas prices were up 25% year-over-year. See NYISO, *NYISO CEO/COO Report* (dated January 26, 2022) at Slides 3, 5.

high electric costs on State efforts to promote and increase electrification of the transportation and building sectors.²⁵

For the foregoing reasons, the Commission should evaluate the very significant cost impacts of the proposed contracts and modify them in a manner that reduces costs to customers.²⁶ In isolation, the proposed contracts are prohibitively expensive, particularly for Upstate customers and especially so for large non-residential customers. When evaluated in conjunction with all of the other programs and initiatives that customers already are or will be required to fund, the potential imposition of additional costs of such magnitude simply are untenable. At a bare minimum, the Commission has a duty to conduct a comprehensive analysis of the aggregate impact of all of the aforementioned programs and the proposed transmission contracts, on a utility-specific and customer-specific basis, so that the full impact of these massive expenditures are understood at the customer level.

²⁵ If New York is serious about electrifying the transportation and building sectors, then the last thing it should be doing is placing significant upward pressure on electric costs. The higher the cost of electric service, the more expensive electrification efforts will become and the less likely they will be to succeed.

²⁶ The State should be seeking alternative funding sources for the numerous investments in support of CLCPA-driven infrastructure so that energy customers are not continually saddled with these costs. In addition to rendering energy costs in New York less competitive with other regions, the current practice of recovering ever-rising public policy-related costs through electric rates and prices will make the State's electrification goals that much more expensive and harder to achieve.

POINT II

THE PLANNED ALLOCATION AND RECOVERY OF CES TIER 4 COSTS ON A SOCIALIZED 100% ENERGY BASIS IS INEQUITABLE AND REQUIRES MODIFICATION

The Commission ruled previously that the cost of Tier 4 compliance would be borne by LSEs – who will pass all such costs onto customers – in proportion to their share of statewide load.²⁷ In other words, under existing policy, Tier 4 costs would be socialized entirely on an energy basis. In so ruling, the Commission concluded that: “Like every tier within the CES, each of which has its own geographic characteristics, the financial responsibility for Tier 4 is most fairly allocated on a statewide load-share basis.”²⁸ Significantly, however, as evidenced by the contracts proposed in the Petition, Tier 4 is not like every other tier in the CES – far from it. For the reasons set forth below, the Commission’s existing policy for allocating and recovering the cost of Tier 4 RECs would be highly inequitable and lead to unfair and excessive cost impacts to large non-residential customers located Upstate. Instead, inasmuch as the proposed transmission lines are in furtherance of a stated public policy goal of directing more renewable power Downstate, the contract costs should be allocated consistent with beneficiaries pay principles. In addition, recovery of Tier 4 costs on an energy-usage basis would be inequitable and, given new information now available to the Commission, that approach should be modified.²⁹

²⁷ Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) at 102.

²⁸ *Id.*

²⁹ In this context, Multiple Intervenors utilizes “cost allocation” and “cost recovery” as two separate concepts, with cost allocation referring to how the costs of Tier 4 compliance would be allocated throughout the different geographic regions of the State, and cost recovery referring to how such costs ultimately would be recovered from individual electric customers.

A. The Allocation of Tier 4 Costs on a Socialized Basis Is Highly Inequitable; Instead, Beneficiaries Pay Principles Should Be Utilized

The Petition advances two contracts that are remarkably different from other CES contracts in a number of ways. Upon information and belief, such differences likely were not known to the Commission at the time the existing cost allocation and cost recovery schemes were adopted. First, the Commission could not have anticipated that the proposed Tier 4 contracts would be so exceedingly expensive. Ironically, when Staff and NYSERDA proposed the institution of Tier 4, they recommended capping the cost of Tier 4 RECs at the cost of Tier 1 RECs:

This White Paper also proposes that any Tier 4 procurement authorized by the Commission be subject to a price cap. The purpose of this proposal is to increase the penetration of renewable energy in zone J by broadening the set of eligible resources, *not by increasing REC prices*. Accordingly, for generation projects that do not directly pay the cost of new transmission facilities, and therefore bear transmission costs comparable to projects typically selected under Tier 1, this White Paper *proposes to cap the expected cost of any Tier 4 RECs at an amount benchmarked to prevailing Tier 1 REC prices*.³⁰

Although the Commission ultimately declined to cap the cost of Tier 4 RECs at the Tier 1 REC price,³¹ it could not reasonably have anticipated that proposed Tier 4 RECs only would offered at multiples of the Tier 1 price and be the most expensive, by far, of all CES Tiers.³²

³⁰ Case 15-E-0302, *supra*, White Paper on Clean Energy Standard Procurements to Implement New York’s Climate Leadership and Community Protection Act (issued January 18, 2020) (hereinafter, “White Paper”) at 52 (emphasis added).

³¹ Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard at 83.

³² As detailed, *supra*, the most recently-reported cost of a Tier 1 REC is \$22.47, available at: <https://www.nyserra.ny.gov/All-Programs/Programs/Clean-Energy-Standard/LSE-Obligations/2021-Compliance-Year>. While the cost of Tier 4 RECs pursuant to the proposed contracts cannot be ascertained with specificity at this time due to indexed structure employed,

Second, Tier 4 was intended to incentivize “locating a utility-scale eligible resource directly in zone J, or by demonstrating that the eligible resource will be delivered using a new transmission interconnection into zone J.”³³ According to the Petition, however, the Tier 4 solicitation did not elicit any viable proposals to develop renewable generation projects within Zone J – all of the proposals submitted relied upon the development of major *transmission* lines to Zone J. (See Petition at 6-7.) This is noteworthy – all of the other CES Tiers provide financial support to new or existing *generation* facilities. Because the Tier 4 contracts at issue here are going to rely upon major new transmission facilities to serve Zone J, then they really are no different from Public Policy Transmission Projects designed to increase the deliverability of renewable resources from one region to another.

The Commission previously has ruled, repeatedly (as detailed *infra*), that the cost of such public policy – driven transmission projects should be allocated pursuant to beneficiaries pay principles. Further, when addressing the proposed applicability of a price cap to Tier 4 RECs, Staff and NYSERDA previously solicited comments “both on the most appropriate mechanism and/or formula for benchmarking the Tier 4 REC price cap to Tier 1 REC prices and, further, on *whether a different price cap may be appropriate for projects that bear the cost of merchant-funded transmission, and thus avoid the need for socialized cost allocation.*”³⁴

based on recent and projected wholesale electricity prices, it is clear that they would be at least several multiples of Tier 1 REC prices.

³³ Case 15-E-0302, *supra*, White Paper at 50.

³⁴ *Id.* at 52 (emphasis added).

Notwithstanding that the Tier 4 public policy-driven transmission projects are targeted at – and for the primary benefit of – Zone J customers, the cost allocation that currently would be utilized inequitably results in higher impacts Upstate than in Zone J. As indicated in the Petition and detailed *supra*, the projected potential first-year impacts to customers of Upstate utilities range from as high as 6.5% (for Central Hudson) to 9.9% (for National Grid). (Petition, Appendix C at 26.) In contrast, the projected potential first-year impacts to customers of Con Edison in Zone J only would be as high as 4.9%, the lowest of any of the State’s regulated electric utilities. (*Id.*)

Moreover, the stated purpose of the two Tier 4 transmission projects is to increase the deliverability of renewable energy to Zone J. That essentially is the same purpose as the Alternating Current (“AC”) Transmission projects, which the Commission ruled previously should be allocated in accordance with beneficiaries pay principles.

Cost allocation first was addressed by the Commission for public policy-driven transmission projects in Cases 12-T-0502, *et al.*, pertaining to the AC Transmission projects.³⁵ In adopting a cost allocation methodology for those transmission lines whereby (i) 75% of the project costs are allocated to the NYISO Zones where the economic beneficiaries are located, and (ii) the remaining 25% of the project costs are socialized on a load-ratio basis (hereinafter, the “75/25” allocation methodology), the Commission stated its support for a beneficiaries pay approach to cost allocation, ruling that “those that derive the benefits of a project should bear the costs.”³⁶ The

³⁵ See Cases 12-T-0502, *et al.*, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades*.

³⁶ Cases 12-T-0502, *supra*, Order Establishing Modified Procedures for Comparative Evaluation (issued December 16, 2014) at 41.

Commission recognized that the majority of the costs would be allocated to the Downstate region, but embraced that outcome, indicating that it “reflects that the primary benefit of the projects will be reduced congestion into downstate load areas, but also recognizes that some benefits accrue to upstate customers in the form of increased reliability and reduced operational costs.”³⁷

Approximately one year later, still addressing cost allocation for the AC Transmission projects, the Commission explained that it had adopted a beneficiaries pay approach for allocating transmission project costs “whereby those that derive the benefits of a project should bear the costs.”³⁸

In reviewing whether a Public Policy Transmission Need (“PPTN”) continued to exist for the AC Transmission projects, the Commission relied upon the CES to conclude that:

The CES will undoubtedly require significant increases in renewable generation capacity with the majority of that additional capability likely to be located in the northern and western regions of the state. The increased transmission capacity will allow these resources to deliver their energy to downstate load centers and avoid being curtailed.³⁹

The proposed contacts at issue here as part of the CES have the exact same purpose: to deliver renewable generation capacity from different regions (*i.e.*, Upstate New York and Canada) to a Downstate load center (*i.e.*, Zone J).

³⁷ *Id.*

³⁸ Cases 12-T-0502, *et al.*, *supra*, Order Finding Transmission Needs Driven by Public Policy Requirements (issued December 17, 2015) at 51 (citation omitted).

³⁹ Cases 12-T-0502, *et al.*, *supra*, Order Addressing Public Policy Transmission Need for AC Transmission Upgrades (issued January 24, 2017) at 18-19.

Addressing challenges to the 75/25 cost allocation methodology for public policy-driven transmission projects, the Commission subsequently reaffirmed its commitment to that approach:

The Commission has previously addressed and adopted a cost allocation methodology for using a “beneficiaries pay” approach, whereby those that derive the benefits of a project should bear the costs. The Commission has repeatedly found that there are numerous potential benefits of implementing the AC Transmission upgrades, and has supported an allocation whereby 75% of the costs are allocated to the economic beneficiaries of the projects and 25% of the costs are distributed on a state-wide load ration share. The Commission continues to find that this 25% allocation compensates for the non-economic benefits that would be realized by all ratepayers.⁴⁰

Notably, the Commission adhered to beneficiaries pay principles when the public policy-driven transmission project was intended to primarily benefit Western New York. Specifically, in describing the driving purpose of the Western New York PPTN projects, the Commission noted that “the potential benefits of reducing or relieving the identified congestion in Western New York include access to increased output from NYPA’s Niagara hydroelectric facility and additional imports of renewable energy from Ontario IESO.”⁴¹ Thus, when the transmission projects at issue were focused on expanding the deliverability of renewable energy located in Upstate New York and Canada to Western New York (just like the Tier 4 projects are intended to do for Zone J), the Commission ruled that the “beneficiaries pay principle” also should apply to those projects.⁴²

⁴⁰ *Id.* at 20 (citation omitted).

⁴¹ Case 14-E-0454, *supra*, Order Addressing Public Policy Requirements for Transmission Planning Purposes (issued July 20, 2015) at 27.

⁴² *See* Case 14-E-0454, *supra*, Order Addressing Public Policy Transmission Need for Western New York (issued October 13, 2016) at 16.

Most recently, the Commission ruled, yet again, that beneficiaries pay principles and the 75/25 methodology should apply in the case of a PPTN focused on accommodating increased OSW generation being developed off of the coast of Long Island:

In order of establish an appropriate cost allocation methodology that is reflective of the Commission’s public policy objectives, the NYISO should apply the “beneficiaries pay principle,” and take into account the economic benefits associated with congestion relief and assign a 75% portion of the project(s) costs to the beneficiaries. However, the remaining portion of the costs should be allocated on a load-ratio share statewide given that increased access to renewables will reduce emissions and thus provide benefits statewide, consistent with the CLCPA’s objectives.⁴³

Use of a cost allocation consistent with beneficiaries pay principles is especially appropriate for the two projects at issue here, if either or both are approved, given that they are HVDC transmission lines. (See, e.g., Petition at 6-7.) These lines essentially would operate as extension cords to Zone J – the customers in that region would benefit predominantly, but customers located in other regions of the State would experience no, or very few, direct benefits.

Thus, on multiple occasions, the Commission has addressed cost allocation with respect to three other sets of public policy-driven transmission projects and, each time, it ruled that beneficiaries pay principles should apply. The 75/25 cost allocation methodology has been employed because it recognizes that, particularly with respect to transmission projects, different regions of the State do not experience the same benefits. Thus, the Commission ruled that 75% of the costs equitably should be borne by the project’s economic beneficiaries, while the remaining

⁴³ Cases 20-E-0497, *In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration for 2020*, and 18-E-0623, *In the Matter of New York Independent System Operator, Inc.’s Proposed Public Policy Transmission Needs for Consideration for 2018*, Order Addressing Public Policy Requirements for Transmission Planning Purposes (issued March 19, 2021) at 24-25.

25% of the costs should be socialized in recognition of certain broader benefits consistent with State policies. Moreover, those three other sets of transmission projects all were intended to facilitate the deliverability of renewable energy to certain regions of the State – just like the Tier 4 transmission projects proposed in the Petition.

Based on the circumstances presented herein, the Commission should follow its prior precedent and apply the beneficiaries pay principles it has used for similar public policy-driven transmission lines. The inequities associated with socializing all Tier 4 costs are revealed in the Petition itself. The mere possibility that National Grid electric customers located Upstate could be forced to bear cost impacts approximately double the impacts borne by Con Edison electric customers – the direct beneficiaries of the proposed contracts – should be an obvious signal that something is wrong with the allocation methodology. Accordingly, if, *arguendo*, the Commission approves one or both of the proposed transmission projects, at a minimum it should reevaluate and then modify the current cost allocation methodology to make it consistent with the approach being applied to other, similar public policy-driven transmission projects.

B. The Recovery of Tier 4 Costs on an Energy Basis Would Be Highly Inequitable and Should Be Modified

Despite Multiple Intervenors’ repeated objections, the Commission frequently relies upon a volumetric, energy-only basis for the allocation and recovery of certain programmatic costs. For instance, the costs of Tier 1 RECs and Tier 3 Zero-Emission Credits currently are recovered from customers on an energy basis, as will be Offshore Wind REC costs. An energy-usage based cost recovery methodology imposes higher costs on larger, high-load-factor customers.⁴⁴ Here, however, if, *arguendo*, one or both of the proposed Tier 4 contracts are

⁴⁴ Ironically, this means that these programs currently have – and in the future will continue to impose – a disparate, negative impact on the State’s most efficient consumers of energy, whom

approved, there are several significant reasons why an alternate cost recovery methodology should be implemented.

First, the projected cost impacts of the two proposed contracts are enormous. Recovering such costs entirely on an energy-only basis would result in inequitable – and unacceptable – impacts on non-residential high-load-factor customers. In the Petition, Staff and NYSERDA project the cost impacts of the contracts under various scenarios. For customers of the Upstate electric utilities, the first year potential impacts could be as high as 6.5% for Central Hudson, 7.5% for RG&E, 8.6% for NYSEG, and 9.9% for National Grid. (Petition, Appendix C at 26.) Worse, the Petition then acknowledges that: “Within utilities, further variation is possible between customer classes. In particular, *impacts on large commercial customers may be up to twice the utility-wide averages*; impacts on residential customers could be up to approximately a third lower.” (*Id.*; emphasis added.)

Thus, pursuant to the projections contained in the Petition, National Grid large non-residential customers could experience up to a 20% increase in electricity costs – approximately three times the increase projected for the utility’s residential customers – as shown below:

Region	High-End First Year Cost Impacts	Impacts on Large Non-Residential Customers	Impacts on Residential Customers
Statewide	5.7%	11.4%	3.8%
Jurisdictional Utilities	6.3%	12.6%	4.2%
Con Edison	4.9%	9.8%	3.3%
Central Hudson	6.5%	13.0%	4.3%
National Grid	9.9%	19.8%	6.6%
NYSEG	8.6%	17.2%	5.7%
Orange & Rockland	5.9%	11.8%	3.9%
RG&E	7.5%	15.0%	5.0%

New York should be seeking to retain for economic development purposes (and who often have the ability to move manufacturing and other facilities to regions with lower energy costs).

Even putting aside the obvious inequity for Upstate customers of socializing the costs of these transmission projects, there is no rational basis why large non-residential customers should be exposed to three times the cost impacts of residential customers.⁴⁵ Quite simply, potential cost impacts even remotely approaching those forecasted in the Petition could be devastating to Upstate businesses, and, when combined with other similar cost transfers, could contribute to plant closures, job losses, and capital investments being directed elsewhere.

Second, the energy-based recovery methodology is inconsistent with cost-of-service principles. While providing renewable energy to Zone J, the two contracts proposed in the Petition primarily are major transmission projects; that is, the majority of the expected costs relate to *transmission* expense, not *generation* expense like other CES tiers. At the retail level, and in utility rate proceeding after utility rate proceeding, transmission expense routinely is allocated on a demand basis in New York.

Use of a demand-based methodology for allocating transmission expense also is consistent with the *Electric Utility Cost Allocation Manual*, published by the National Association of Regulatory Utility Commissioners (January, 1992) (hereinafter, “NARUC Manual”). According to the NARUC Manual: “Customer transmission cost responsibility in the cost of service is expressed in terms of allocation ratios. These ratios *are usually developed on the basis of customer demands to the sum of all demands deemed to be imposed on the total system or subsystem*. (NARUC Manual at 75.) The NARUC Manual then discusses potential demand-based allocation methods, such as ones focused on a Single System Coincident Peak, an Average

⁴⁵ Moreover, it is possible that the doubling of cost impacts anticipated by Staff and NYSERDA for “large customer customers” very well may understate the actual impacts that would befall large, high-load-factor customers engaged in manufacturing and similar, energy-intensive activities.

Seasonable System Coincident Peak, an Average of the 12 Monthly System Coincident Peak, and a Single Non-Coincident Peak Demand. Even a potential methodology that considers class energy consumption – such as the Average and Excess Allocation Method – still is heavily reliant upon class demands. (*See id.* at 75-82.) Thus, the potential allocation of the costs associated with one or both of the proposed transmission projects on a purely energy basis would be inconsistent with basic cost-of-service principles that previously have been followed in New York.

For all the foregoing reasons: (a) allocating the costs of one or both of the contracts proposed in the Petition on a socialized, load-ratio basis would be grossly inequitable to customers located Upstate, who would experience materially-larger percentage impacts than Zone J customers (the primary beneficiaries of those contracts); and (b) recovering the costs from customers on a purely energy basis would be grossly inequitable to large Upstate non-residential customers, particularly those with high load factors – *e.g.*, large manufacturers that the State should be seeking to attract and retain, rather than making them less competitive via the imposition of extreme and inequitable energy cost impacts.

CONCLUSION

For all the foregoing reasons, the Commission needs to evaluate carefully the exceedingly-high costs that the contracts proposed in the Petition would impose on electric customers and take actions that would materially ameliorate the associated cost impacts. To the extent that the contracts, as modified, are approved, the Commission should reconsider and modify the manner in which the resulting costs would be allocated to and recovered from customers, consistent with the positions espoused herein.

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Albany, New York

Respectfully submitted,

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