

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

COMMENTS OF INDEPENDENT
POWER PRODUCERS OF NEW YORK, INC.

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Dated: January 21, 2025

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Pursuant to the November 20, 2024, Notice of Proposed Rulemaking,¹ Independent Power Producers of New York, Inc. (“IPPNY”) hereby comments² on the “Department of Public Service Staff Proposed Definitions of Key Terms in PSL § 66-p” filed, on November 4, 2024, in the above-captioned case.³ In its Zero Emissions Proposal, Department of Public Service (“DPS”) Staff suggests interpretations of key terms of the Climate Leadership and Community Protection Act (“CLCPA” or “Climate Act”), codified in Public Service Law (“PSL”) § 66-p, including the terms “statewide electrical demand system” and “zero emissions.”

I. BACKGROUND

The CLCPA establishes a target of a zero emission statewide electric system by 2040 (the “2040 Zero Emissions Target”).⁴ Comprehensive studies confirm existing renewable energy

¹ NY Reg., Nov. 20, 2024 at 21.

² IPPNY’s comments do not necessarily represent the position of its individual members.

³ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Department of Public Service Staff Proposed Definitions of Key Terms in PSL § 66-p (Nov. 4, 2024) (“Zero Emissions Proposal”).

⁴ The 2040 Zero Emissions Target is codified in Section 66-p(2) of the PSL. It provides, in relevant part: “. . . the commission shall establish a program to require that: (a) a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty shall be generated by renewable energy systems; and (b) that by the year two thousand forty (collectively, the “targets”) the statewide electrical demand system will be zero emissions.”

technologies lack the necessary baseload and dispatchability characteristics necessary to operate the system, and thus, these technologies alone are incapable of meeting the electric needs of New York consumers and ensuring electric system reliability if all fossil-fueled generation were to be removed to meet the 2040 Zero Emissions Target.⁵ Recognizing this fact, on May 18, 2023, the New York State Public Service Commission (the “Commission”) issued an order in the above-captioned case initiating a process to identify the necessary complementary technologies that must be added to the system to ensure its ongoing reliability and the mechanisms needed to facilitate their development.⁶

The member companies of IPPNY, a not-for-profit trade association representing the independent power industry in New York State, have invested billions of dollars in New York’s competitive electric generation system to meet the electric needs of New York consumers and ensure system reliability since the inception of retail competition in 1996. IPPNY member companies continue to be actively involved in the operation and ongoing maintenance of a wide range of electric generating technologies, including renewable resources, the generation, sale, and marketing of electric power, the development of new generation facilities, and the development of energy storage facilities in the State of New York. IPPNY member companies produce a majority of New York’s electricity, utilizing almost every form of baseload and variable generation technology available today, such as wind, solar, natural gas, low-sulfur oil, run-of-river hydro, biomass, energy storage, waste-to-energy, and nuclear.

⁵ 2021-2040 System & Resource Outlook, New York Independent System Operator, Inc. (Sept. 22, 2022) (“2022 System Study”) at 9–12 (finding as much as 45 GW of dispatchable energy free, non-renewable resources will be needed by 2040 to ensure system reliability), https://www.nyiso.com/documents/20142/32663964/2021-2040_System_Resource_Outlook_Report_DRAFT_v15_ESPWG_Clean.pdf/99fb4cbf-ed93-f32e-9acf-ecb6a0cf4841.

⁶ Case 15-E-0302, *supra*, Order Initiating Process Regarding Zero Emissions Target (May 18, 2023) (“May 18 Order”).

On August 16, 2023, IPPNY submitted comments in response to the Commission’s June Notice regarding resources that are capable of supporting the reliability of a zero emissions electric system and the actions that should be taken to achieve the 2040 Zero Emissions Target.⁷ Informed by the comments filed by IPPNY and other parties in response to the June Notice, on October 10, 2023, the Commission issued a Notice Seeking Further Comments on a series of additional questions,⁸ to which IPPNY submitted comments in response on February 20, 2024.⁹

This process has culminated in the Zero Emissions Proposal, in which DPS Staff proposes a definition of “the statewide electrical demand system” and a definition of “zero emissions.” As explained herein, the Commission should:

1. adopt a definition of “zero emissions” that measures emissions on a net basis;
2. rule that a technology that produces emissions that are *de minimis* in the context of the total emissions reduced by the technology qualifies as a zero emission source;
3. rule “zero emissions” refers to greenhouse gases only and not to emissions of other air pollutants;
4. rule zero emissions electrical demand system includes imports of electricity; and
5. adopt a proactive evaluation process to consider the impacts of the 2024 Zero Emissions Target on safe, reliable and affordable energy and identify the steps necessary to support system reliability during the transition period to 2040 and beyond.

⁷ Case 15-E-0302, *supra*, Notice Extending Comment Period (June 28, 2023) (“June Notice”); Case 15-E-0302, *supra*, Comments of Independent Power Producers of New York, Inc. (Aug. 16, 2023) (“August Comments”).

⁸ Case 15-E-0302, *supra*, Notice Seeking Further Comment (Oct. 20, 2023) (“October Notice”).

⁹ Case 15-E-0302, *supra*, Comments of Independent Power Producers of New York, Inc. (Feb. 20, 2024) (“February Comments”).

II. DISCUSSION

A. The Commission Should Exercise its Discretion to Define the Term “Zero Emissions” on a Net Emissions Basis.

In its Zero Emissions Proposal, DPS Staff recommends interpreting “net zero” as distinct from “zero.”¹⁰ According to DPS Staff, even though the CLCPA does not expressly provide how the Commission should distinguish between “net zero” and “zero,” the CLCPA’s “formulation of—and exclusions from—the ‘alternative compliance mechanism’ for greenhouse gas emissions reductions imposes a clear limit on the Commission’s interpretive discretion.”¹¹ Although DPS Staff acknowledges that the language of the CLCPA gives the Commission some interpretive discretion, DPS Staff’s legal analysis concludes that the CLCPA “did not give the Commission discretion to adopt net emissions accounting for power sector resources or resources that generate energy by consuming primary fuels in a way that involves the avoidance or reduction of emissions at another time or place or in another sector.”¹²

IPPNY strongly disagrees with DPS Staff’s interpretation of the CLCPA. As highlighted in IPPNY’s August and February Comments, the Legislature granted the Commission broad discretion and authority to design a program to meet 2040 Zero Emissions Target while maintaining system reliability and limiting rate impacts to electricity consumers. The Legislature granted the Commission express authority to “consider and where applicable formulate the program[s] to address impacts of the program[s] on safe and adequate electric service in the state under reasonably foreseeable conditions” and “modify the obligations of jurisdictional load serving entities and/or the targets upon consideration of” impacts to safe and

¹⁰ Zero Emissions Proposal at 19.

¹¹ *Id.* at 20–21.

¹² *Id.* at 21.

adequate electric service.¹³ The CLCPA is also carefully bounded to ensure reliability and affordability, providing that “the Commission may temporarily suspend or modify” the program if it finds “that the program impedes the provision of safe and adequate electric service; the program is likely to impair existing obligations and agreements; and/or that there is a significant increase in arrears or service disconnections that the commission determines is related to the program.”¹⁴

DPS Staff ignores that the CLCPA requires the Climate Action Council’s Scoping Plan to make recommendations for achieving “net zero emissions in *all* parts of the economy” by 2050.¹⁵ All provisions of a law must be considered and interpreted consistently, and the law itself must be given its full effect.¹⁶ All parts of the economy necessarily must include the generation sector. Notably, consistent with the statutory language, the Climate Action Council’s Scoping Plan accordingly recommended:

Develop net zero energy systems: NYSERDA and DPS should develop energy systems that can best support a net zero emissions economy in New York, including programs that leverage private capital to invest in conversion technology for bio-based feedstock into bio-based products.¹⁷

As demonstrated in comments filed to date, it is also important to consider that “zero emissions” is itself an impracticable standard because “very few sources of energy have literally zero [greenhouse gas (“GHG”)] emissions associated with their production and throughout their

¹³ May 18 Order at 9 (quoting PSL § 66-p(2)).

¹⁴ PSL § 66-p(4).

¹⁵ New York Environmental Conservation Law (“ECL”) § 75-0103(11) (emphasis added).

¹⁶ See NY Jur 2d Statutes § 184; see also *Carney v. Philipponne*, 1 N.Y.3d 333, 339 (2004).

¹⁷ *Climate Action Council Scoping Plan*, New York State Climate Action Council (Dec. 2022) (“Scoping Plan”) at 309, <https://climate.ny.gov/-/media/Project/Climate/Files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf>.

life cycle.”¹⁸ New York courts have repeatedly rejected statutory constructions that produce unreasonable or absurd applications of the law.¹⁹ The Legislature’s omission of the word “net” from PSL § 66-p(2)(b) thus cannot be deemed to somehow require the Commission to develop a program that was not achievable.

DPS Staff asserts that the alternative compliance mechanism is the only means under the CLCPA to allow for the netting of emissions, and, because electric generators are not permitted to use the alternative compliance mechanism, zero emissions in Section 66-p of the PSL cannot mean net zero.²⁰ Contrary to DPS Staff’s assertion, the provisions of the CLCPA that authorize the Department of Environmental Conservation (“DEC”) to adopt an alternative compliance mechanism and DEC’s accounting of emissions from a greenhouse gas emitting source on a gross basis do not constrain or otherwise inform the Commission’s definition of the phrase “by the year [2040] the statewide electrical demand system will be zero emissions.” The alternative compliance mechanism applies only to the requirement in the CLCPA that requires DEC to implement regulations to reduce emissions by at least 85% from 1990 levels. The CLCPA does not require DEC to implement the alternative requirement mechanism, and, if DEC does not do so, the provisions prohibiting generators from using the alternative compliance mechanism to net emissions for purposes of meeting the 85% GHG reduction goal are inapplicable. DEC’s Chief of the Bureau of Energy and Climate Change provided this interpretation to the Climate Action Council in 2020.²¹

¹⁸ Case 15-E-0302, *supra*, Comments of National Grid in Response to May 18, 2023 Order Initiating Process Regarding Zero Emissions Target (Aug. 16, 2023) at 4.

¹⁹ *People v. Schneider*, 37 N.Y.3d 187, 197 (2021); *People v. Garson*, 6 N.Y.3d 604, 614 (2006); *Long v. State of N.Y.*, 7 N.Y.3d 269, 273 (2006); *N.Y. State Ass’n of Crim. Def. Lawyers v. Kaye*, 96 N.Y.2d 512, 519 (2001).

²⁰ Zero Emissions Proposal at 21.

²¹ Presenting at a meeting of the Climate Action Council, the Chief of the Bureau of Energy and Climate Change at the DEC Office of General Council, Jonathan Binder, stated the DEC is “not required to adopt an alternative

Moreover, the alternative compliance mechanism does not apply to the Commission’s obligations under PSL § 66-p. If the Legislature intended that the restrictions associated with the alternative compliance mechanism apply to the Commission’s designation of resources that can satisfy the 2040 Zero Emissions Target, it would have so stated in PSL § 66-p. As IPPNY explained in its August Comments, the CLCPA constrains DEC’s actions and not the Commission’s by reaffirming the Commission’s obligations to ensure safe and adequate electric service.²² Determinative to the matters before the Commission here, when the Legislature granted the Commission the authority to fashion its program to achieve the 2040 Zero Emissions Target, the Legislature expressly authorized the Commission to modify such target to ensure safe and adequate electric service. In contrast, the Legislature directed DEC to adopt regulations to achieve the GHG targets without authorizing DEC to fashion its regulations or modify the GHG targets *to ensure safe and adequate electric service*. This statutory construct thus accounts for the fact that the Commission is the State agency that must protect public health and safety by taking regulatory action to maintain electric system reliability.²³

Because the Legislature did not condition the Commission’s authorization on other agency actions, DEC’s regulations implementing the GHG targets cannot undercut the

compliance mechanism. The statute provides us with the ability to, and only if we were to adopt one, would any of the various prohibitions in that provision kick in . . . that includes regarding the use of biogas . . . So, the point is that these prohibitions in this provision only apply if we determined that we were going to adopt an alternative compliance mechanism.” Meeting Recording: New York State Climate Action Council November 24, 2020 Meeting (Nov. 30, 2020), at 2:18:32, <https://www.youtube.com/watch?v=tkkmkPyg6Tw>.

²² August Comments at 9.

²³ The Climate Action Council’s Scoping Plan accurately notes, “[w]hile transitioning away from fossil fuel use, maintaining reliable access to power, whether through centralized or distributed energy sources, is crucial for maintaining good public health in our energy-dependent society.” Scoping Plan at 105. As reflected in Governor Kathy Hochul’s 2025 State of the State, advanced nuclear development provides a centralized, dispatchable clean energy solution to maintain reliable access to power that meets New York’s growing demand. *See 2025 State of the State: Governor Kathy Hochul*, Office of the Governor (Jan. 2025), at 122–123, <https://www.governor.ny.gov/sites/default/files/2025-01/2025StateoftheStateBook.pdf>.

Commission’s obligation to implement the CLCPA in a manner that ensures safe and adequate service.²⁴ As a matter of law, various parts of the CLCPA related to the Commission and DEC must be read harmoniously.²⁵ It is certainly the case that the Commission and DEC should work closely together, in consultation with the New York Independent System Operator, Inc. (“NYISO”), to establish rules implementing the CLCPA that avoid inadvertently jeopardizing electric system reliability.²⁶ That said, in no event is the Commission’s authority here limited by DEC rulemakings. Commission determinations on these matters must stand.

Thus, the Legislature’s intent is clear that maintaining the reliability of the electric system without unduly increasing costs for electric service borne by New York consumers are the paramount considerations; neither can be subordinated to meet the 2040 Zero Emissions Target. Commensurate therewith, the Commission has ample authority to define relevant terms in the PSL enacted under the CLCPA in a manner that best achieves these parameters.

As noted above, the CLCPA does not define “zero emissions.” Given that the CLCPA does provide other definitions, this fact means the term must be defined by the Commission as a

²⁴ Courts have repeatedly rejected statutory constructions that produce unreasonable or absurd applications of the law. *People v. Schneider*, 37 N.Y.3d 187, 197 (2021); *People v. Garson*, 6 N.Y.3d 604, 614 (2006); *Long v. State of N.Y.*, 7 N.Y.3d 269, 273 (2006); *N.Y. State Ass’n of Crim. Def. Lawyers v. Kaye*, 96 N.Y.2d 512, 519 (2001).

²⁵ The courts must “harmonize the various provisions of related statutes and . . . construe them in a way that renders them internally compatible.” *Matter of Aaron J.*, 80 N.Y.2d 402, 407 (1992); *see* N.Y. Stat. Law §§ 97, 98. The Commission noted in its May 18 Order that DEC’s consideration of the combustion of biomass as contributing to gross emissions under the CLCPA “is relevant to, though, not necessarily determinative of, whether the use of biomass as fuel for power plants can be considered zero-emissions for the purpose of compliance with PSL §66-p(2), or net-zero for purposes of the CLCPA’s separate net-zero emissions target.” May 18 Order at 14. DEC’s regulations implementing the CLCPA should accommodate, not undercut, the Commission’s designation of renewable natural gas (“RNG”) and derivatives thereof to fuel Dispatchable Emissions Free Resources (“DEFERs”) as zero emissions because they are necessary to help maintain system reliability.

²⁶ For example, DEC should accede to the Commission’s definition of zero emissions as it relates to electric system resources and the Commission’s designation of zero emissions sources and forego adopting regulations implementing the GHG targets that interfere, or are inconsistent, with the Commission’s determinations on these matters.

matter of law.²⁷ Based on the CLCPA’s explicit grant of authority to the Commission to fashion the program in a manner that ensures it will not adversely impact electric system reliability and the Commission’s longstanding authority and obligation to ensure safe and adequate electric service generally under PSL § 65, the Commission is authorized to define zero emissions and other undefined terms in PSL § 66-p(2), designate the sources to achieve the 2040 Zero Emissions Target and establish the mechanisms to secure them in a manner that best ensures electric system reliability will be maintained during the transition to a zero emissions electric system and beyond.

As IPPNY demonstrated in its August Comments, the Commission should exercise its discretion to define zero emissions on a net basis to most effectively ensure electric system reliability will be maintained during, and following, the transition to a zero emissions electric system. Critical to achieving the CLCPA’s core purpose of combatting climate change, the Commission must define this term so that the broadest possible set of technologies able to fill the gap between the capabilities of existing renewable energy technology and expected future system reliability requirements can be utilized.²⁸ Several studies performed for the Commission and the NYISO demonstrate that renewable generation cannot alone support electric system reliability needs going forward irrespective of how much transmission is added.²⁹ As the Commission has already acknowledged in its May 18 Order, the gap identified in numerous studies “could be

²⁷ As matter of law, Commission action is authorized if a realistic appraisal of the particular situation demonstrates that its “administrative action reasonably promotes or transgresses the pronounced legislative judgment” even absent explicit statutory authorization. *In re Consol. Edison Co. of N.Y. v. Pub. Serv. Comm’n of State of N.Y.*, 47 N.Y.2d 94, 102 (1979), *rev’d on other grounds*, 447 U.S. 530 (1980).

²⁸ See August Comments at 5–13.

²⁹ May 18 Order at 11.

bridged with zero emissions resources that have performance characteristics similar to those of existing fossil fuel generators or that depart from that conventional profile.”³⁰

The need to develop approximately 17–45 gigawatts (“GW”) of DEFRs to meet system reliability needs by 2040 has been established.³¹ For example, in its Outlook, the NYISO confirmed that DEFRs that provide sustained on-demand power and system stability will be critical to replace the electrical attributes that fossil fueled generation has been providing to achieve a reliable, emission-free grid.³² The NYISO’s analysis indicated that a majority of DEFRs will be needed in New York City and Long Island, due to their locational capacity requirements, as early as 2035 and continuing through 2040.³³ In one of the scenarios the NYISO studied, the amount of DEFR capacity required in these zones is more than double the fossil generation capacity today.³⁴

³⁰ *Id.* at 2, 10.

³¹ See Johannes Pfeiffenberger et al., *Initial Report on the Power Grid Study*, The Brattle Group (Jan. 19, 2021), at 102 (projecting that zero emissions could be achieved by 2040 with 17 GW to 23 GW of thermal backstop generation fueled with landfill gas, biogas, or other renewable natural gas), <https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/NY-Power-Grid/full-report-NY-power-grid.pdf>; *2021–2040 System & Resource Outlook*, NYISO (Sept. 22, 2022) (“Outlook”), at 9–11 (concluding 27 GW to 45 GW of DEFRs will be needed to meet reliability needs by 2040”), <https://www.nyiso.com/documents/20142/33384099/2021-2040-Outlook-Report.pdf>; Paul J. Hibbard et al., *Climate Change Impact Phase II, An Assessment of Climate Change Impacts on Power System Reliability in New York State, Final Report*, Analysis Group (Sept. 2, 2020) (“Phase II Climate Study”), at 83–84 (concluding that removal of all the existing fossil-fueled generating resources by 2040 in compliance with the 2040 Zero Emissions Target will require greater than 30 GW of installed capacity of new flexible and dispatchable resources to provide the necessary reliability services that have historically been provided by fossil-fueled generating resources), <https://www.nyiso.com/documents/20142/15125528/02%20Climate%20Change%20Impact%20and%20Resilience%20Study%20Phase%202.pdf/89647ae3-6005-70f5-03c0-d4ed33623ce4>. The NYISO’s Outlook defined DEFRs as “a proxy generator type assumed for generation expansion in the Policy Case to represent a yet unavailable future technology that would be dispatchable and produces emissions-free energy (e.g., hydrogen, RNG, nuclear, other long-term season storage, etc.).” Outlook at 48. The New York State Climate Action Council’s Scoping Plan indicated that its “analysis and current studies show that the 100x40 goal requires 15 GW to 45 GW of electricity from zero-emission, dispatchable resources in 2040 to meet demand and maintain reliability.” Scoping Plan at 13.

³² Outlook at 60.

³³ *Id.* at 51.

³⁴ *Id.*

Based on the foregoing, clear Commission guidance and a transparent path forward are required to ensure system reliability is maintained as the 2040 Zero Emissions Target is met. Thus, consistent with the Climate Act’s establishment of a goal of net zero emissions across all sectors of the economy by 2050, the Commission should accordingly issue an order: (i) establishing that GHG emissions should be measured on a net basis for purposes of meeting the 2040 Zero Emissions Target; and (ii) as established below, adopting Staff’s proposal to implement a program to evaluate system needs.³⁵

The Commission should also expressly find in its order that technologies, whether alone or combined with other technologies, that reduce total emissions while producing a *de minimis* level of emissions qualify as zero emission sources in compliance with the CLCPA’s mandate to meet the 2040 Zero Emissions Target. Such a definition would qualify a potential resource, such as a generator using carbon capture, utilization, and storage (“CCUS”) (including direct air capture (“DAC”)), as a zero emissions source if it reduces GHG emissions by 90% to 99%, or, in the case of RNG, if it results in a net reduction of GHG emissions to zero.³⁶

As noted above, the gap between the forecasted capacity of existing renewable generation technologies and the projected demand will be insurmountable if not addressed practicably. The capacity of DEFRs needed exceeds the capacity of existing fossil fueled generation in the State and far surpasses the 12.9 GW of generation of all types added to the system over the last 20

³⁵ ECL § 75-0109. The Scoping Plan stated that it “is designed to act as a plan that the State should follow to meet the requirements of the statewide greenhouse gas (GHG) emission limits and achieve statewide net zero emissions pursuant to the [CLCPA].” Scoping Plan at 51.

³⁶ DPS Staff noted that, “when applying the 2040 target, the Commission should treat as cognizable emissions from both a resource’s operations and its fuel production process.” To avoid uncertainty, the Commission should clarify that a resource’s operation, by itself, does not result in GHG emissions if GHGs are not emitted into the atmosphere. Even if the Commission, *arguendo*, rules that GHG emissions cannot be netted for purposes of meeting the 2040 Zero Emissions Target, the Commission should clarify that a generator utilizing CCUS that captures its GHG emissions before they enter the atmosphere and stores them is not netting its emissions and is, thus, a zero emitting resource.

years.³⁷ To deploy such quantities of resources in the next 16 years, on top of the renewable energy systems and transmission development already underway, will require unprecedented development beginning immediately. The Commission risks making the perfect the enemy of the good if it rejects technologies perceived by some parties as not 100% zero emitting but that could begin significantly reducing GHG emissions now in hopes that a technological breakthrough in battery storage will arrive in time to fill the gap.³⁸ Importantly, the Legislature recognized the diminishing returns of too narrowly interpreting the statute's target by permitting "a *de minimis* threshold of greenhouse gas emissions below which emission reduction requirements will not apply."³⁹

Accordingly, defining zero emissions in this manner will cost effectively and efficiently yield the complementary resources needed to fill the gap and meet the 2040 Zero Emissions Target reliably.

B. IPPNY Supports DPS Staff's Interpretation of Zero Emissions as Referring to Greenhouse Gases Only.

IPPNY agrees with DPS Staff's recommendation to interpret "zero emissions" to refer to greenhouse gases only and not to emissions of other air pollutants. As IPPNY explained in its February Comments, nothing in the CLCPA, its legislative history, or any other relevant source of authority suggests the term "zero-emissions" in PSL § 66-p must encompass any emissions other than GHG emissions. Absent express statutory language, the primary consideration in the

³⁷ Outlook at 59.

³⁸ Long duration storage will play an important role in meeting the State's mandates. The Commission should consider that long duration storage paired solely with intermittent renewables would require an extensive overbuild of solar and wind facilities to supply such storage through seasonal and sporadic wind and solar lulls. It clearly cannot be the sole solution. Existing, clean baseload resources (*e.g.*, nuclear and New York Power Authority large hydroelectric) and new DEFRs will be required.

³⁹ ECL § 75-0103(14)(c).

interpretation and construction of a statute is to ascertain and give effect to the intention of the Legislature.⁴⁰ DPS Staff correctly explains that the CLCPA’s legislative findings, several of its definitions, and the CLCPA’s reference to the term “co-pollutants” all reflect the Legislature’s intent that co-pollutants are not included in the term “zero emissions.”⁴¹ Accordingly, the Commission should adopt these aspects of DPS Staff’s recommended interpretation.

C. Statewide Electrical Demand System

IPPNY agrees with DPS Staff’s recommendation to interpret zero emissions electrical demand system as including imports of electricity.⁴² As IPPNY explained in its February Comments, the Commission should define statewide electrical demand system as including all of the State’s retail load served by Commission-jurisdictional load serving entities (“LSEs”) and non-jurisdictional LSEs that voluntarily comply with the Commission’s implementation of the CLCPA whether the LSEs procure their electricity from in-State or out-of-State generation. This is consistent with the CLCPA’s definition of statewide greenhouse gas emissions, which is defined as “the total annual emissions of greenhouse gases produced within the state from anthropogenic sources and greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the state and the extraction and transmission of fossil fuels imported into the state.”⁴³ Defining statewide electrical demand system to include retail load that is served by out-of-State resources is necessary to prevent emissions leakage by ensuring that high emitting generators in other states, that are not subject to the Commission’s jurisdiction, cannot be allowed to circumvent the requirements of the CLCPA.

⁴⁰ N.Y. Stat. Law §92(a); *see also Danskammer Energy LLC v. N.Y. Dep’t of Env’t Conservation*, 173 N.Y.S.3d 134, 172 (N.Y. Sup. Ct., 2020) (citing *Avella v. City of New York*, 29 N.Y.3d 425 (2017)).

⁴¹ Zero Emissions Proposal at 13.

⁴² *Id.* at 9.

⁴³ ECL § 75-0101(13).

D. The Commission Should Adopt a Program to Proactively Evaluate System Development Under the CLCPA and Impacts on Safe and Adequate Service

As established above and accurately captured in the Zero Emissions Proposal, variable resources must be balanced by baseload capacity, including a substantial amount of new DEFR development, to maintain reliable electric service throughout the transition to the 2040 Zero Emissions Target and beyond. To support ongoing operation of existing zero emission resources and the development of this new supply to timely meet CLCPA mandates, the State must expeditiously begin to perform proactive evaluations identifying the type and level of needs to maintain system reliability. For example, in her 2025 State of the State, Governor Hochul announced the development of a master plan for responsible advanced nuclear development to meet the State's growing demand with clean dispatchable resources.⁴⁴

Pointing to the Commission's authority under PSL § 66-p(2), DPS Staff recommends the Commission should clarify that it will define a program to proactively evaluate and comparatively analyze potential technologies and their effects on safe and adequate service under reasonably foreseeable conditions.⁴⁵ To ensure developers can secure the requisite financing to proceed with the development necessary to achieve the CLCPA's mandates, IPPNY urges the Commission to issue an order specifying the program to proactively identify and evaluate how CLCPA and system reliability needs will be met and directing DPS Staff to engage stakeholders and define this program.

⁴⁴ See *2025 State of the State: Governor Kathy Hochul*, Office of the Governor (Jan. 2025), at 122–123, <https://www.governor.ny.gov/sites/default/files/2025-01/2025StateoftheStateBook.pdf>.

⁴⁵ Zero Emissions Proposal at 34.

III. CONCLUSION

For the foregoing reasons, the Commission should define the terms “zero emissions” and “statewide electrical demand system” consistent with IPPNY’s comments herein. As explained herein, the Commission should:

1. adopt a definition of “zero emissions” that measures emissions on a net basis;
2. rule that a technology that produces emissions that are *de minimis* in the context of the total emissions reduced by the technology qualifies as a zero emission source;
3. rule “zero emissions” refers to greenhouse gases only and not to emissions of other air pollutants;
4. rule zero emissions electrical demand system includes imports of electricity; and
5. adopt a proactive evaluation process to consider the impacts of the Zero Emissions Target on safe, reliable and affordable energy and identify the steps necessary to support system reliability during the transition period to 2040 and beyond.

Dated: January 21, 2025
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Respectfully submitted,

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