

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

Case 22-M-0149 - Proceeding on Motion of the Commission Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act.

Independent Intervenors

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Comments Regarding the Stakeholder Process for a PSL 66-p(4) Hearing to Evaluate Whether to Temporarily Suspend or Modify the Renewable Energy Program

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Position

Roger Caiazza, Richard Ellenbogen, Constantine Kontogiannis, and Francis Menton (“Independent Intervenors”) are submitting these comments in response to the Notice Soliciting Comments Regarding Petition for Hearing to Suspend or Temporarily Modify Renewable Energy Program¹, issued January 28, 2026, in Cases 15-E-0302 and 22-M-0149. These comments presume that the Commission decides to hold a hearing pursuant to Public Service Law (PSL) §66-p(4) to evaluate whether to temporarily suspend or modify the targets or provisions under the Renewable Energy Program established as part of the Climate Leadership and Community Protection Act (CLCPA). We argue that the hearing process must change from the format used in the stakeholder process in the Scoping Plan and the Energy Plan. All stakeholders deserve to be heard but all technical issues must be resolved. We recommend that once everyone has had an equal chance to raise their concerns that the Commission categorize and prioritize the technical issues submitted and convene a technical hearing conference that resolves the substantive issues raised in comments.

The Legal Framework Requires Adequate Resolution

PSL § 66-p(4)² provides that the Commission "may temporarily suspend or modify the obligations under such program provided that the commission, after conducting a hearing as provided in section twenty of this chapter, makes a finding that the program impedes the provision of safe and

¹ <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BB057059C-0000-CB6F-B693-29F98246A22E%7D&DocTitle=Notice+Soliciting+Comments+Regarding+Petition+for+Hearing+to+Suspend+or+Temporarily+Modify+Renewable+Energy+Program>

² https://newyork.public.law/laws/n.y._public_service_law_section_66-p#b-that-by-the-year-two-thousand-and-forty-collectively-the-%E2%80%9Ctargets

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". The Legislature included this safety valve precisely for the circumstances New York now faces.

PSL § 66-p(4) separately directs the Commission, when establishing the program, to address impacts on safe and adequate electric service under reasonably foreseeable conditions, which further supports use of a technically rigorous process rather than a generalized policy discussion. These are technical issues that require open, transparent discussion and resolution.

Recommendation

The Independent Intervenors respectfully request that the Commission establish a revised stakeholder process for any PSL § 66-p(4) hearing that is designed to develop a usable factual record on the statutory standards in the law. The requested process should replace prior stakeholder approaches for the CLCPA Scoping Plan³ and the New York State Energy Plan⁴ that relied primarily on broad public participation without a structured mechanism to identify, test, and resolve disputed technical issues bearing on reliability, system adequacy, affordability-related arrears, and consistency with existing obligations.

Specifically, the Commission should order the following process steps:

³ <https://climate.ny.gov/resources/scoping-plan/>

⁴ <https://energyplan.ny.gov/Process/Energy-Plan-Process>

1. A notice opening an initial comment period that gives all stakeholders a meaningful opportunity to identify issues relevant to the statutory findings required by PSL § 66-p(4).
2. Commission Staff prepare an issue list that categorizes and prioritizes the comments received into major technical subjects, including reliability, resource adequacy, transmission readiness, contract and compliance obligations, arrears and disconnections, and definitions of safe, adequate, and affordable service.
3. Identification of opposing positions on each material issue so that participants and Staff can see where there is consensus, where there is factual disagreement, and where methodological disagreements require focused review.
4. A schedule that provides sufficient time for written comments, reply comments, and preparation of supporting technical materials so that the record is not limited to conclusory assertions.
5. One or more technical conferences at which both sides of disputed issues are presented in a structured manner, with sufficient time for questions from Staff and stakeholders.
6. A dedicated conference session addressing the meaning of “safe,” “adequate,” and “affordable” service, because those terms are central to the Commission’s statutory findings and need common definitions before competing analyses can be compared.
7. A post-conference report prepared by Staff that summarizes the issues raised, the competing positions presented, the areas of agreement and disagreement, and explains how those discussions inform the Commission’s determination under PSL § 66-p(4).

Basis for the Petition

PSL § 66-p(4) does not authorize a policy-only exercise; it requires the Commission to conduct a hearing and make findings on whether the renewable energy program impedes safe and adequate electric service, is likely to impair existing obligations and agreements, or is related to significant increases in arrears or service disconnections.⁵ Those subjects turn on technical evidence, analytical assumptions, and transparent evaluation of conflicting claims, so the stakeholder process must be designed to surface and test those issues rather than obscure them.

New York State's prior stakeholder processes in related planning exercises did not provide an adequate mechanism to acknowledge and resolve technical objections raised in comments.⁶ As a result, parties could submit technical concerns, but there was no reliable process to classify disputed issues, identify contrary positions, and explain how unresolved disagreements affected the final conclusions.

A revised process is also consistent with the statute's structure. Section 66-p(2) requires the Commission to consider impacts on safe and adequate electric service under reasonably foreseeable conditions when establishing the renewable energy program, and Section 66-p(4) provides a hearing mechanism to suspend or modify obligations if the program later impedes safe and adequate service or triggers other statutory concerns.⁷

⁵ https://newyork.public.law/laws/n.y._public_service_law_section_66-p#b-that-by-the-year-two-thousand-forty-collectively-the-%E2%80%9Ctargets

⁶ https://www.ergcommentcat.com/docs/NYSEP25/NYSEP25-15396/Caiazza_Draft_New_York_State_Energy_Plan_Comments_regarding_the_Stakeholder_Process.pdf

⁷ https://newyork.public.law/laws/n.y._public_service_law_section_66-p#b-that-by-the-year-two-thousand-forty-collectively-the-%E2%80%9Ctargets

Because both provisions depend on technically supportable judgments, the Commission should adopt a stakeholder framework that is structured enough to support findings pursuant to Public Service Law § 20, the statutory standard for Commission hearings, including contested matters and proceedings where the Commission is required to make findings on the record under Section 20 hearing standards and eventual Commission action.⁸

Proposed Process Elements

The Independent Intervenors recommend the following process components.

Open Comment Period

The first step should be an open comment period that allows any stakeholder to identify issues relevant to the PSL § 66-p(4) standards. That period should be long enough to permit submission of technical analyses, not merely summary statements, because the statutory questions involve complex electric system and affordability matters.

Staff Issue List and Prioritization

After the initial comments, Staff should prepare a public issue list that groups submissions into discrete categories and ranks them by their significance to the statutory findings. This step would focus the proceeding on the issues that matter most to whether the renewable energy program is compatible with safe and adequate electric service and related legal obligations.

⁸ https://newyork.public.law/laws/n.y._public_service_law_section_20

Opposing Positions

For each major issue, the process should identify the principal opposing positions and the key factual or methodological disputes separating them. Doing so would prevent a one-sided workshop format and would ensure that the record clearly distinguishes contested assertions from uncontested facts.

Technical Conferences

The Commission should convene technical conferences devoted to the prioritized issues, with balanced presentation of opposing analyses and active questioning by Staff. This format would better align the proceedings with the statute's hearing purpose by creating an organized record on disputed technical issues instead of a generalized policy conversation.

Definitions Session

A separate session should address the definitions of safe, adequate, and affordable service. Without agreed or at least clearly stated definitions, parties may use those terms inconsistently, making it difficult for the Commission to determine whether the statutory thresholds in PSL § 66-p(4) have been met.

Staff Report

At the close of the technical conferences, Staff should issue a report that documents the issues discussed, the competing positions, the evidence relied upon, and the way those discussions bear on the statutory findings the Commission must make. That report would improve transparency and help ensure that final Commission determinations are traceable to the actual record developed in the proceeding.

Rationale

The proposed process is necessary because technical comments are useful only if the proceeding has a structure that can evaluate them and explain their effect on the ultimate decision. A revised process that classifies issues, identifies competing positions, allows time for technical support, and produces a documented record would materially improve the Commission's ability to decide whether the renewable energy program impedes safe and adequate electric service within the meaning of PSL § 66-p(4).

The process would also provide a fairer and more credible framework for all participants. Supporters and critics of the renewable energy program would each have an opportunity to present their best technical case, respond to contrary analyses, and create a record that the Commission can use for findings that are legally and factually defensible.

Proposed Ordering Clauses

The Independent Intervenors respectfully request that the Commission issue an order:

- Establishing a revised stakeholder process for any PSL § 66-p(4) hearing consistent with the process elements described above.
- Directing Department of Public Service Staff to develop and publish a categorized and prioritized issue list based on stakeholder comments.
- Requiring the identification of opposing positions on disputed technical issues material to the statutory standards in PSL § 66-p(4).
- Scheduling technical conferences with adequate time for written submissions, replies, and conference presentations.

- Including a dedicated session on the definitions of safe, adequate, and affordable electric service for purposes of the hearing record.
- Requiring a post-conference Staff report that explains how the record developed through the stakeholder process informs the Commission's determination whether the renewable energy program should be suspended or modified under PSL § 66-p(4).