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**
In the Matter of New York Independent System Operator, Inc. Proposed Public Policy Transmission Needs for Consideration for 2022.	**Case 22-E-0633**

ADDITIONAL COMMENTS OF THE CITY OF NEW YORK ON UTILITY-OWNED RENEWABLE GENERATION

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PRELIMINARY STATEMENT

As part of its consideration of the progress under the Clean Energy Standard, the New York Public Service Commission ("Commission") has sought input on utility ownership of renewable generation and review of the State's renewable solicitation practices.[1] The City of New York ("City") previously argued that utility ownership of generation is anti-competitive, and customers are well-served by the competitive marketplace. The City also asserted that utility ownership will not expedite the development or renewable resources, but it could expose customers to upward pressure on their utility bills. With respect to the solicitation process, the City submitted that the process is not flawed, and other factors have caused projects to not be completed. The City's positions have not changed, and the City respectfully urges the Commission to continue on the course set in the 1990s of promoting and encouraging competition and private investment in generation. Doing so will be in customers' and the State's best interests, keep risks on developers

[1] Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings (issued May 15, 2025) ("Biennial Review Order").

and investors rather than customers, help to maintain energy affordability, and encourage innovation.

PROCEDURAL HISTORY

On July 1, 2024, Department of Public Service Staff ("DPS Staff") and the New York State Energy Research and Development Authority ("NYSERDA") jointly filed a Draft Clean Energy Standard Biennial Review report in the above-captioned proceeding ("Biennial Review"). The Biennial Review discussed the State's progress in achieving the goals of the Climate Leadership and Community Protection Act ("CLCPA"),[2] identified factors affecting that progress, provided details on renewable resources that are being developed, and provided an overview of the funding and expenses for the Clean Energy Standard. The Biennial Review also presented proposals for actions that could be taken to enhance the State's ability to achieve the CLCPA goals.

On May 15, 2025, the Commission issued an Order adopting the Biennial Review and sought additional input on two topics: utility ownership of renewable generation, and review of the State's renewable solicitation practices.[3] Subsequently, the Commission issued a Notice Soliciting Comments on these two topics.[4] The City submitted comments in response to that Notice on October 31, 2025.

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2 L. 2019, ch. 106.

3 Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings (issued May 15, 2025) ("Biennial Review Order").

4 Cases 15-E-0302, *et al.*, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Notice Soliciting Comments (issued July 30, 2025).

In a subsequent Notice, the Commission now seeks additional comments regarding utility ownership of renewable generation, some of which are based on comments provided by parties on the prior set of questions.[5] The City respectfully offers the following comments in response to the Notice.

COMMENTS

The City has long supported the development of renewable generation and actions in furtherance of achievement of concurrent State and City policy goals related to emissions reductions and decarbonization. At the same time, the City is very concerned about energy affordability. Increasing numbers of New Yorkers are struggling to pay their utility bills. In New York City alone, over half a million residential electric and gas customers collectively have arrears greater than 60 days in excess of $1 billion. The actions taken in pursuit of policy goals must take affordability into account, and they must be done in a cost-effective and efficient manner. Importantly, achievement of policy goals should avoid negatively impacting and shifting risks and burdens onto customers.

The Notice posed a series of questions to better inform the Commission's assessment of whether changes to its policies and practices are warranted to better serve the interests of New Yorkers. The City provides the following comments to select questions posed in the Notice. Silence on any question should not be taken as a position of the City.[6]

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[5] Cases 15-E-0302, *supra*, Notice Soliciting Comments (issued January 27, 2026) ("Notice").

[6] Some of the questions posed in the Notice are directed to the utilities regarding proposals they previously filed in this proceeding. The City reserves the right to respond to those proposals after the utilities provide the requested information and more details. Additionally, the questions posed in the Notice were not numbered. For ease of understanding, the questions restated herein are numbered.

While the questions in the Notice are focused on renewable projects, some mention of storage projects is warranted. Energy storage has unique attributes, including the ability to provide a source of supply, serve as a form of transmission, and support operation of utility distribution systems. There are several models which could apply to energy storage, ranging from exclusively private development and operation at one end of the spectrum, to private development pursuant to utility directives, to private development with utility operational control, to utility ownership and operation at the other end of the spectrum. The wholesale electricity markets have demonstrated that it is possible to maintain the benefits of a competitive system while separate entities own and operate electric system assets. The City recommends that the Commission study the costs and benefits of all possible models for energy storage before making any decision on utility ownership of such resources. The purpose of the study should be to select the model that maximizes the deployment and use of such resources at the lowest cost to customers.

RESPONSES TO QUESTIONS

UTILITY OWNED GENERATION

1. **Identify the financial impacts and risks to ratepayers of the various options proposed by BMR Energy (build transfer, develop transfer, or milestone-based transfer), Indicated Utilities (build transfer agreement), and New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E") (self-build model) as described in response to the July Notice. To the extent possible, include potential ways in which the risks and or impacts could be avoided, mitigated, or managed.**

As noted in the question, parties previously submitted proposals for models to manage the development, construction, and ownership of renewable generation projects, should the Commission allow utilities to own such projects after over twenty-five years of the Commission maintaining a position that utility ownership of generation resources is anti-competitive, and New

Yorkers are better served by a competitive marketplace where the risks of development and operations are borne by developers and investors.

BMR Energy proposes three models for construction, ownership, and the associated risks. Under the "Build Transfer" model, the developer would take on the full risk of development and construction, and then transfer the costs (and project) to the utility once it is "advanced" enough for the utility to avoid the bulk of the risk. Under this model, the utility avoids the risks associated with construction, but bears the full costs with little control over mitigating said costs, as well as the costs and risks of operating and maintaining the resources. Under the "Develop Transfer" model, the utility would fund construction under a negotiated contact. The developer would assume the risks associated with developing the project, but not constructing it. The utility would bear all construction, operations, and maintenance risks and costs. Under the third model, the "Milestone Based Transfer" model, the developer would be responsible for the initial development costs and actions (*i.e.*, obtaining land, interconnection, permits, and developing a contract) prior to transferring the project to the utility. This is different than the "Develop Transfer" model in that the utility would make payments to the developer along the way at different key milestones. This model places more risk on the utility, as well as all of the costs of development, construction, operations, and maintenance. The City does not see any of these models as benefitting customers or meaningfully protecting customers from the costs and risks of utility ownership of generation. The Milestone Based Transfer model is the most problematic proposal as the costs to be borne by developers are minimal compared to the overall costs of developing and constructing a generating facility.

Some of the utilities collectively propose a "Build Transfer Agreement" system wherein the utilities would conduct statewide joint competitive solicitations to procure agreements from

developers, and the utilities would purchase the generation projects after construction is complete. They believe this system would attract new developers to the State and expand the pool of possible projects. Under this model, the generation projects would be jointly owned by the utilities to cover the entire State and allow for increased funding to invest in individual projects. Under this proposed model, it appears that construction risks would be on developers, with lower risks placed on the utilities.

The utilities offer no basis for their claim that this method would attract new developers to the State or expand the number of projects. Rather, this project is most likely to chill or entirely eliminate merchant development of generation because the utilities would be working together and have a much greater potential to favor their own project over those of unaffiliated developers. Moreover, this approach exposes customers to substantial increases in utility bills as the utilities seek to recover the costs they paid and incur from customers rather than the wholesale markets.

Under NYSEG and RG&E's proposed "Self-Build" model, the utilities would develop, construct, own, and operate the generation projects from start to finish. Costs would be regulated under traditional cost-of-service ratemaking. NYSEG and RG&E claim this would be a more streamlined and cost-effective approach because it removes risk premiums associated with non-regulated development structures, and would leverage lower financing costs.

The Commission determined in the 1990s that traditional cost-of-service ratemaking for generation was not in the public interest. Via this proposal, the utilities would have little to no incentive to control costs or ensure peak performance. Customers would be exposed to all risks and costs of ownership and operation of the facilities.

Overall, each proposed model presents potential financial impacts and risks to customers. Given the significant risks and cost impacts to customers, the City continues to strongly advocate

against utility ownership of generation. The Commission was right in deciding on divestiture of utility-owned generation, and no valid or compelling basis has been presented in this proceeding to support a departure from the Commission's prior decision. Customers and the State have been better off with competition, and there is no basis to find that renewed vertical integration would be in the public interest.

Nevertheless, should the Commission find that the utilities should be permitted to develop, construct, own and operate renewable generation projects, it is crucial that any such authorization be structured in a manner that places the risks on the utilities' shareholders. Such authorization also should include performance metrics and negative revenue adjustments so that the utilities are motivated to control costs, maintain superior performance, and innovate as appropriate. Put another way, the authorization should ensure that customers are protected and the value of utility ownership is shared between customers and shareholders.

2. What advantages and disadvantages would utilities face overall in terms of siting renewable projects that may not have been considered previously? Identify any potential shortcomings of the advantages described and any remedial action the utilities could take to address any disadvantages described.

The renewable energy marketplace has changed, particularly in light of current federal policies. While the Inflation Reduction Act remains in effect, significant modifications and funding rollbacks continue. For example, the One, Big, Beautiful Bill Act, signed into law on July 4, 2025, scaled back tax credits for the development of wind and solar projects.[7] Specifically, for a developer to receive a clean electricity investment credit related to the development of a wind or solar project, the facility must be placed in service by December 31, 2027, for any projects that

[7] Pub. L. No. 119-21.

begin construction after July 5, 2026.[8] These changes apply equally to private developers and utilities.

The absence of tax incentives means that the cost of developing renewable resources will be more expensive. For a private developer, the result could be that a project is no longer economically viable. A utility, however, may not care about the loss of the tax credits and effect on project economics because it can pass along all of the costs to its customers. While customers will be severely impacted by more expensive projects and high utility bills, the utility shareholders will receive their essentially guaranteed returns on larger rate bases and be better off.[9] This is not equitable, and it certainly is not in customers' best interests.

Moreover, as we have seen in recent years, inflation and supply chain issues, as well as ongoing impacts of global conflicts, have driven up the costs of construction materials and labor. These factors have made it seemingly infeasible for certain projects to move forward.[10] If utilities are allowed to own generation, these factors likely would not influence their decisions on whether to proceed because the impacts will be on customers, not shareholders or investors. Indeed, it will be customers, not shareholders, who bear the impacts of these factors and higher costs. At the

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8 *See* 139 STAT. 270, Sec. 70513.

9 Most or all of the major electric utilities in New York have revenue decoupling mechanisms in place. Therefore, they are essentially assured of receiving at least the returns upon which rates are set, and they have the opportunity to earn more than their approved returns.

10 *See generally* Case 15-E-0302, *supra*, Petition of the Alliance for Clean Energy New York to Address Post COVID-19 Impacts on Renewable Development Economics and Contract Considerations (filed June 7, 2023); Verified Petition of Sunrise Wind LLC for an Order Authorizing the New York State Energy Research and Development Authority to Amend the Offshore Wind Renewable Energy Certificate Purchase and Same Agreement (filed June 7, 2023); Verified Petition for Expedited Approval of Enhanced Offshore Renewable Energy Credits (filed June 7, 2023); and Petition of Clean Path New York LLC to Address Post-COVID Impacts and Associated Considerations Concerning the Tier 1 Eligible Generation Component of its Clean Energy Standard Tier 4 Renewable Energy Certificate Contract (filed June 14, 2023).

same time, the higher costs will translate to higher rate base and higher earnings for shareholders. Again, such a result would not be in the public interest.

As noted above, the City has been, and continues to be, concerned about the affordability of utility rates, particularly as New Yorkers shoulder compounding increases in the cost of living. Presently, utility rates across the State are barely or not affordable at all for many New Yorkers, especially in New York City where the cost of living is significantly higher than the rest of the State. Indeed, Governor Hochul emphasized the need to address energy affordability concerns in her 2026 State of the State Address, announcing a series of reforms to the Public Service Law to "fight more effectively for lower bills."[11]

While affordability has been a concern for some time now, the lack of federal tax credits for renewable generation projects places a new cost burden on such projects. If the Commission allows utilities to develop renewable generation projects, this cost burden will be passed on to customers who already can barely afford their bills. While the City supports the buildout of renewable generation projects in support of the State's, and the City's, climate and emissions reduction goals, that buildout should not occur in a manner that exacerbates affordability problems.

3. How would the utilities provide certainty and transparency to ensure that their renewable energy project(s) are not unduly favored over other non-utility projects that are further along in the Standardized Interconnection Requirements queue and/or in a better position to be built more quickly?

The Commission established the Standardized Interconnection Requirements ("SIR") to provide a framework for processing applications for the interconnection of distributed energy

[11] Governor Kathy Hochul, 2026 State of the State Book (January 2026) at 36, available at: https://www.governor.ny.gov/sites/default/files/2026-01/2026StateoftheStateBook.pdf.

resource ("DER") projects 5 MW or less. The Commission first adopted the SIR in 1999[12] and has continuously adapted and revised the requirements over the last 25 years to ensure the requirements are consistent with the changing market and system needs. Consistent with these efforts, it is critical that utilities follow the SIR requirements to ensure efficient and consistent growth of DERs across the State, in line with the State's clean energy and emissions reduction goals. However, the City understands that developers across the State have experienced issues with utilities not complying with the requirements of the SIR, particularly when it comes to cost containment and ensuring projects are built and in-service in a timely manner. Indeed, there are petitions pending right now regarding Consolidated Edison Company of New York, Inc.'s unilateral changes to the SIR which have effectively prohibited energy storage projects from being interconnected in New York City.

Given the current slate of problems, the City does not believe it is possible to provide the certainty and transparency needed. To the contrary, allowing utilities to develop DERs is likely to worsen the problems for unaffiliated developers. The lack of transparency could worsen. The question then becomes, will the Commission act promptly in the event utility projects are able to proceed while private developer projects continue to encounter hurdles, delays, and shifting interconnection costs?

In the event the Commission allows utility ownership of DERs, the SIR should be revised and appropriate regulatory oversight mechanisms be put in place. This should include regular reporting by the utilities and the need to inform the Commission as to the reasons for any delays beyond that which is determined to be a reasonable amount of time. While the City recognizes

[12] Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Adopting SIRs for Distributed Generation Units (issued December 31, 1999).

that a uniform schedule or timeline for development projects is infeasible due to the varying and unique circumstances of each project, utilities should be required to meet certain milestones, including conclusion of design work and conducting necessary site studies, and provide regular reporting to the Commission as to the status of development and construction of projects. These reports should include expenditures to date and a list of all pending projects within the utility's service territory with information on each as to the status of the project, how long it has been in the queue, and the status of all utility-related interconnection and upgrade work. This will allow the Commission to monitor the status of project development to ensure that utility-owned projects are not being favored over others, and step in, where necessary, to ensure that projects are moving forward in a timely manner.

4. **If Utility Owned generation were to be allowed, what approaches should be considered in order to optimally ensure projects are completed cost-effectively and timely. Identify the role competition should play, and how proposed approaches should be structured to leverage competition to arrive at least cost resources.**

The City maintains its position that the policy on utility ownership of generation should not be altered. Without a fully competitive market, which is impossible if utilities were to be involved, the State will see higher costs borne by customers while utility shareholders are enriched.

If the Commission were to allow utility ownership of generation, as noted above in response to Question No. 3, regular reporting to the Commission and increased regulatory oversight is critical to ensure that utilities are conducting themselves properly and there is a level playing field between utility and non-utility projects. Additionally, utilities must be bound by strict cost containment measurements to ensure that development and construction risks are placed on shareholders, not customers. When the Commission does not impose cost containment, utilities may not care about, or seek to avoid or minimize, cost overruns, nor will they have reason to

carefully manage project costs and remain within budget.[13] Customers cannot be seen as a source of inexhaustible funding. If the risks associated with developing, constructing, operating and owning a project are on the utility, then the utility will be incentivized to complete projects timely, efficiently, and cost-effectively. Moreover, this gives utilities an additional means to address affordability concerns by contributing to the increased use of renewable energy in a cost-efficient manner. Indeed, when a utility must bear the full cost of a project, it is in their best interest, from both a reliability and financial standpoint, to ensure such project is done well and in a way that does not damage its bottom line.

Separate from cost containment, the Commission should impose strong performance metrics and steep negative revenue adjustments on the utilities' processing of unaffiliated developers' interconnection requests and on the completion of interconnection and upgrade facilities. Such matters are with the utilities' control, and severe consequences for improper conduct are needed to protect customers and unaffiliated developers. That is, the Commission should remove any and all financial incentives for the utilities to favor their projects and their shareholders over other projects and other developers. Another measure would be to impose, from the outset, divestiture requirements in the event a utility engages in favoritism or other improper conduct. Utilities should not be given multiple opportunities to change their behavior. They should understand up front that one instance of favoring their own projects will result in a requirement that they divest all of their generation. Again, these are matters wholly within the

[13] This is has been the case with Con Edison's UTEN Pilot Projects, where, even though budgets were set, the Company has come back to the Commission to request additional funding to complete its projects, and has demonstrated overspending in its expenditure reports to the Commission. *See, e.g.*, Case 22-M-0429, Proceeding to Implement the Utility Thermal Energy Network and Jobs Act, Petition of Consolidated Edison Company of New York, Inc. for NYS Public Service Commission Authorization to Incur Necessary Utility Thermal Energy Network Pilot Administration and Contingency Costs (filed May 3, 2024)

utilities' control, and draconian penalties are justified because of the massive harm that their improper conduct could cause. If the utilities drive out competition because of their conduct, costs will increase, performance could suffer, and innovation and progress will be stifled (as occurred prior to the Commission's move to competition in the 1990s and is still occurring in the slow pace of the utilities' adoption of advanced transmission technologies).

ENERGY AND CAPACITY MARKET DESIGN

1. What is the State role with respect to resource adequacy matters that best serve New York's electricity customers with safe, adequate, and reliable service at just and reasonable rates in the context of State policies?

The State has jurisdiction over resource adequacy matters. For example, the Installed Reserve Margin ("IRM") was established by the New York State Reliability Council ("NYSRC") to ensure the adequacy of electric generation to serve load in New York. The Commission has jurisdiction to review and approve the IRM, as a matter of resource adequacy and reliability, consistent with the requirements of Public Service Law §65(1).

The Commission's jurisdiction over resource adequacy also has a basis in the Federal Power Act ("FPA"). The FPA expressly reserves the rights of states to exercise jurisdiction "over facilities used for the generation of electric energy or over facilities used in local distribution."[14] The Federal Energy Regulatory Commission ("FERC") is prohibited from "order[ing] the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services."[15] Further, the FPA provides for the "authority of any State to take action to ensure the safety, adequacy, and reliability of

[14] 16 U.S.C. § 824(b).

[15] 16 U.S.C. § 824o(i)(2).

electric service within that State, as long as such action is not inconsistent with any reliability standard, except that the State of New York may establish rules that result in greater reliability within that State, as long as such action does not result in lesser reliability outside the State than that provided by the reliability standards."[16] This language makes clear the Commission's authority over resource adequacy. The Commission has continuously exercised jurisdiction over resource adequacy matters pursuant to the FPA through the adoption of an annual IRM for the New York Control Area.[17]

CONCLUSION

The City continues to support the expansion of renewable energy across the State as a way to reduce greenhouse gas emissions and decarbonize the electric system. However, affordability concerns grow each day and it is critical, more than ever, that the Commission properly ensure that rates remain just and reasonable. Changing the Commission's long-standing policy against utility ownership of renewable generation resources is likely to come with increased costs that are ultimately borne by customers. Importantly here, there is no factual or other basis supporting a change in the Commission's policy – no party has pointed to changed circumstances or new facts justifying utility ownership, and the issues inhibiting the development of renewable resources will not be overcome via utility ownership.

The City respectfully urges the Commission not to change its policy and to refrain from allowing utilities to own renewable generation. If the Commission finds that it would be in the public interest to allow utility ownership, , the Commission should impose detailed reporting

[16] 16 U.S.C. § 842o(i)(3).

[17] *See generally* Case 05-E-1180, *supra*, Order Adopting Installed Reserve Margin for the 2025-2026 Capability Year (issued March 20, 2025).

requirements, cost containment, performance metrics, substantial negative revenue adjustments, and severe penalties to incentivize the utilities to avoid favoring their own projects and to place the risks of development and operation of such facilities on shareholders. Additionally, the Commission must engage in extensive oversight of the utilities to ensure that the development and construction process remain transparent, fair, and efficient.

Respectfully submitted,

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