

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

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

COMMENTS OF INVENERGY LLC

Introduction

Invenergy LLC (Invenergy) offers the following comments in response to the Notice Soliciting Comments issued by the New York State Public Service Commission (PSC) on January 27, 2026, in the above referenced proceeding (January Notice).¹ In the January Notice, the PSC sought information on potential pros and cons of permitting New York's investor-owned utilities (IOUs) to re-enter the generation market to develop, build, own and operate renewable generation in New York State and recover their costs through residential rates.²

The January Notice supplements a notice soliciting comments on utility-owned generation (UOG) and procurement improvements issued July 30, 2025 (July Notice).³ The July Notice followed shortly upon the PSC termination of the NYC Offshore Wind (OSW) Public Policy Transmission Need (PPTN) following the federal government's moves to block OSW development and the recognition by the PSC and the New York State Energy Research and Development Authority (NYSERDA) that the State is behind schedule in meeting its climate goals codified in the Climate Leadership and Community Protection Act (CLCPA). These notices were thus, in Invenergy's opinion, spurred in large part by State's desire to ascertain ways to accelerate the pace of renewable generation development.

Invenergy is a member of the Alliance for Clean Energy New York (ACE NY) and shares ACE NY's concerns advanced in the comments in this docket of the Clean Energy Parties (CEP) that granting IOUs unfettered authority to develop, own and operate

¹ 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 January 27, 2026).

² This is distinct from the authority the IOUs already possess to establish unregulated competitive affiliates to undertake these activities in New York.

³ 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).

renewable generation would adversely affect the ability of independent entities to participate on a level playing field in the New York electric system and severely diminish the competitive market. Invenergy files these comments to highlight where it differs from the views expressed in the CEP comments.

Invenergy has extensive experience in partnering successfully with IOUs in other jurisdictions pursuant to various commercial structures and believes that a limited program under appropriate conditions could provide benefits to consumers.

Ultimately, however, the impediments that have delayed and hampered independent renewable developers (IRD) from bringing to commercial operation renewable generation in the quantities and timeframe needed to meet the CLCPA goals would apply equally to IOUs as to IRDs. Simply authorizing IOUs to own renewable generation will not contribute to faster development of critically needed generation and could well have the opposite effect.

Accordingly, Invenergy believes the PSC would be better served by addressing the permitting and financial impediments that have hindered renewable development in New York.

Discussion

New York has a unique market construct with NYSERDA acting as the central procurement authority for large-scale renewable projects under the Tier 1 program. The Tier 1 program has attracted private investment from developers under its procurement process, with NYSERDA serving as a credit-worthy counterparty contracting Renewable Energy Credits (RECs).

In recent solicitations, procurement reforms have been implemented to address systemic industry challenges, but more can be done, especially with the current federal administration's efforts to undermine renewable energy projects and to increase their costs. Invenergy believes focusing on these efforts will yield greater results in facilitating renewable energy development than would authorizing IOUs to re-enter the generation development and ownership function.

As mentioned, Invenergy has a significant history of working with IOUs in other jurisdictions pursuant to a variety of commercial structures, including build transfer, develop transfer, and milestone-based transfer arrangements as well as sales under long-term power purchase agreements (PPAs) and tolling arrangements. Pursuant to these arrangements, Invenergy has demonstrated a strong record of developing new renewable generation projects in both vertically integrated and restructured markets.

Invenergy believes that a limited program of IOU ownership of renewable resources procured via competitive solicitations and developed by independent developers could provide benefits to consumers by providing a credit-worthy counterparty with relatively low cost of capital. If limited to a small percentage of system demand, such a program

could provide benefits without engendering the important concerns identified in the CEP comments.

Power purchase agreements represent an attractive and viable mechanism to support renewable development. New York's IOUs have resisted programs that would call for them to enter into long-term PPAs to support renewable generation development, citing issues related to New York's implementation of the so-called "six cent law" in the 1980s and claiming that PPAs are viewed by rating agencies as a form of debt that, if used extensively, would theoretically increase their risk profile and potentially drive up their cost of capital. In practice, this phenomenon has not been proven.

More likely, IOU resistance to significant use of PPAs is driven by the fact that the costs they incur under PPAs are simply passed through to ratepayers without markup or profit to the IOU. Thus, the IOU quite reasonably would prefer to recover the capital cost of new generation in rate base to earn a return on these funds, rather than simply recover the cost of operating units developed by third parties.

However, contracting mechanisms have evolved to address issues that arose with the early forms of PPAs. Moreover, performance-based contracting structures have been developed that enable IOUs to receive premiums for PPA cost recovery that can provide incentives for IOUs to enter into such arrangements.⁴ Certain states are allowing utilities to earn a return above simply recovering the cost of the PPA.⁵ Often these incentives are designed to meet emission reduction targets or renewable generation mixes. PPAs will often be a more affordable option for ratepayers versus direct utility ownership of a generation project. New York has a history of utilizing Performance-Based Ratemaking (PBR) and Performance Incentive Mechanisms (PIMs).⁶ Similar programs could be extended to ensure utilities are willingly and prudently conducting competitive solicitations for long-term PPAs.

Invenergy also supports, and has successfully developed renewable projects in other jurisdictions, using appropriately structured arrangements whereby IRDs develop and transfer (or develop, construct and transfer) to an IOU after selection via an open, competitive solicitation process. Transfer arrangements that provide the IRD milestone-based progress payments prior to transfer can reduce the risk and cost of such transfer projects and reduce consumer costs. Further, such build-transfer, develop-transfer and milestone-based transfer arrangements can be coupled with the

⁴ Invenergy notes that the January Notice also sought comments on a self-build model proposed by New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E). For the reasons stated in these comments concerning the IOUs' poor track record of completing project on time and within budget, Invenergy recommends the PSC reject the self-build model.

⁵ Washington statute [RCW 80.28.410 \(2\)\(b\)](#) allows a rate of return on PPAs which is no less than the cost of debt and no greater than the authorized rate of return.

⁶ Case # [24-E-0165](#) Grid of the Future proceeding proposes to use performance-based incentives to invest in grid flexibility programs.

IRD's provision of operation and maintenance services, thereby eliminating the need for the IOUs to establish this capability in-house.

Accordingly, if the PSC deems it appropriate to permit IOUs a limited role in the generation market, Invenergy encourages the PSC to consider using PPAs as one element of a portfolio of tools – that includes appropriately structured build-transfer, develop-transfer and milestone-transfer arrangements - to support renewable generation development.

As stated, Invenergy believes that a limited program of IOU ownership of renewable resources could provide benefits to consumers by providing a credit-worthy counterparty with relatively low cost of capital. If limited to a small percentage of system demand, a program to select appropriately structured PPAs or transfer arrangements via competitive solicitations open to IRDs could provide benefits without engendering the important concerns identified in the CEP comments. Such arrangements also could include a role for the IRD to provide ongoing operation and maintenance services post transfer to eliminate the need for the IOUs to staff up to provide that function internally.

However, a number of structural impediments exist that suggest authorizing IOUs to re-enter the generation market is highly unlikely to meaningfully accelerate the pace of renewable generation development. First, IOUs lack personnel with expertise in the development and permitting of renewable generation resources owing to their exit from that marketplace pursuant to longstanding PSC policy. Similarly, they lack personnel with experience in operating and maintaining renewable resources. It would be a costly and time-consuming endeavor for them to acquire this capability if they were to seek to develop renewable resources in-house.

Second, in New York, IOUs face the same impediments to accelerating renewable generation development as IRDs face, so authorizing them to re-enter the generation market will not accelerate renewable development. IOUs have no ability to accelerate or avoid the lengthy and complex permitting process, and they are subject to the same supply chain and inflationary pressures that affect development and capital costs and timing.

The experience with New York's Build Public Renewables Act (BPRA) is instructive. The BPRA was passed in May 2023 and authorized the New York Power Authority (NYPA) to contract with IRDs to develop renewable resources. Despite diligent efforts by NYPA, to Invenergy's knowledge the BPRA has not yet resulted in new renewable resources commencing construction under that program.

This is not surprising, given the complexity and number of processes and commercial arrangements that must be addressed in standing up such a program. But this history demonstrates that even if the PSC were to issue an order today authorizing IOUs to enter the renewable generation market and start developing projects from scratch, it would likely be many years before the State would see new renewable generation commence construction under an UOG model.

Third, IOUs have a poor track record of completing development projects on time and within budget. Under rate base recovery, they are permitted to recover cost overruns from consumers, absent a showing that these overrun costs were incurred imprudently. Thus, unlike PPAs, build transfers and other structures described above that place the risk of overruns on developers, were the PSC to permit IOUs to develop, own and operate generation under rate base regulation, the risk of cost overruns would be borne by ratepayers.

A report prepared last year by FTI Consulting, Inc., (FTI) for New York's Affordable Clean Power Alliance (NYACPA) entitled Competitive Power Benefits for New Yorkers (NYACPA Report)⁷ found that the IOUs would not be able to develop renewable generation more quickly or at lower cost than IRDs. To the contrary, FTI found:

- *The transition to a competitive market has provided significant benefits to New York ratepayers and advanced the goals originally envisioned by state policymakers. New York Public Service Commission (“NYSPSC”) decisions supporting private ownership of electric generation have already protected New York ratepayers from cost overruns.*
- *Full or partial return to utility-owned generation would expose New York ratepayers to increased risk and higher development costs. New York utilities have a track record of cost overruns for the portions of the grid they control and have passed or attempted to pass cost increases onto captive ratepayers.*
- *New York utilities must already make significant investments into the transmission system to support clean energy projects, which is impacting their ability to raise capital, undercutting the notion that they can finance new renewable expansion at more favorable terms and prices than private developers.*
- *New York has fallen short of its ambitious renewable goals not because of insufficient developer interest in building new generation, but due to challenges created by local opposition, cost inflation, and insufficient investment into the transmission system.*
- *Utilities in New York face the same development process and timelines as Independent Power Producers (“IPPs”). Full or partial return to utility ownership would provide no relief from concerns about*

⁷ NYACPA is comprised of ACE NY, Advanced Energy United, the Independent Power Producers of New York, Inc. (IPPNY), New York Battery Energy Storage Technology Consortium (NY-BEST), New York Solar Energy Industries Association (NYSEIA), and Solar Energy Industries Association (SEIA). The report is available at: https://www.nyacpa.org/vs-uploads/pdf/1743101822_FTICompetitiveBenefitsNYFINAL20250327.pdf

long project development timelines in the context of meeting the Climate Leadership and Community Protection Act's ("CLCPA's") targets and mandates.

- *States, including New York, with majority IPP ownership have exhibited more rapid deployment of renewables and emission reductions than utility-dominated states.*
- *Competitive generation owners have been economic partners in New York for decades, supporting thousands of jobs and billions in state and local taxes.⁸*

Thus, while a limited program of IOU ownership might provide benefits, and Invenergy would be happy to participate in competitive solicitations to provide development, construction as well as operation and maintenance services, Invenergy believes authorizing IOUs to participate in the generation market developing their own projects will not help to solve the issues in New York that are impeding renewable development.

These impediments include (1) a lengthy permitting process with multiple approvals needed even after the New York State Office of Renewable Energy Siting (ORES) permit is obtained and unpredictable additional requirements from agencies other than the PSC, (2) federal resistance to renewables resulting in inability to secure federal permits and approvals and in early termination of tax credits supporting development, and (3) unforeseeable cost changes due to trade tariffs, supply chain challenges, and inflationary impacts of wars, pandemics and other global events.

These impediments will apply equally to projects developed or owned by IOUs as they do to IRDs. Invenergy notes that NYSEG and National Grid have affiliates that operate as IRDs, and they have been no more successful navigating these impediments than non-affiliated IRDs.

The PSC, NYSEERDA and the State of New York in general have been active in evolving procurement processes and contracts to address these challenges. Invenergy applauds these efforts, but more can be done to design procurement policies that are flexible enough to address the types of challenges noted above when they arrive without causing previously approved procurement contracts to no longer be economically viable, resulting in the need for cancellation and rebidding of projects.⁹ In that regard, Invenergy supports the procurement related comments contained in the CEP filing in this docket.

Conclusion

While a limited program allowing IOUs to secure and own renewable generation via competitive solicitations using appropriately structured transfer arrangements or power

⁸ NYACPA Report, p. 5, emphasis added.

purchase agreements might provide some benefit by supplementing NYSERDA's role as the critical creditworthy counterparty, IOU full re-entry into the renewable generation market will not address the fundamental challenges impeding renewable development. Accordingly, Invenergy urges the PSC to focus on procurement and permitting enhancements to further expedite independent renewable development.

Respectfully submitted,

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