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**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**

**COMMENTS OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL**  
**CONSERVATION ON THE ORDER INITIATING PROCESS REGARDING**  
**ZERO EMISSIONS TARGET**

**February 19, 2024**

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The New York State Department of Environmental Conservation (NYSDEC) submits these comments regarding the Order Initiating Process Regarding Zero Emissions Target (Order) issued by the Public Service Commission (PSC) on May 18, 2023, and in response to the PSC’s October 20, 2023 Notice Seeking Further Comment (Notice), pursuant to Section 4 of the Climate Leadership and Community Protection Act (Climate Act), codified at Public Service Law (PSL) Section 66-p. Specifically, NYSDEC submits these comments in response to the PSC’s threshold question of how “zero emissions” as used in PSL Section 66-p should be defined. Furthermore, this comment letter addresses New York State Department of Public Service (DPS) Staff’s additional inquiries in the Notice as to whether NYSDEC’s emissions accounting regulations under 6 NYCRR Part 496 (Part 496) – which are utilized for a variety of purposes under the Climate Act and counts emissions from the combustion of biomass for electricity generation on a gross basis – should inform the PSC’s interpretation of the phrase “2040 the statewide electrical demand system will be zero emissions.”

**I. Introduction and NYSDEC Interest in Proceeding**

NYSDEC’s interest in this proceeding is the result of its requirements and implementation actions to date under the Climate Act, including under Environmental Conservation Law (ECL) Sections 75-0105, -0107, and -0109, as well as Climate Act Section 7. The outcome of this proceeding may have implications for NYSDEC and the State under each of these Climate Act provisions. Similarly, this proceeding could implicate regulations or other actions taken by NYSDEC pursuant to these statutory provisions.

The Climate Act includes the requirement in ECL Section 75-0107 to establish a statewide greenhouse gas emissions limit for the years 2030 and 2050 equal to sixty (60) percent and fifteen (15) percent of 1990 emissions, respectively. NYSDEC promulgated Part 496 to implement this requirement. In addition, under ECL Section 75-0109, NYSDEC is charged with promulgating enforceable regulations to ensure the attainment of these statewide greenhouse gas emission limits, which will include programs such as the New York Cap-and-Invest (NYCI) program that is currently under development, along with a suite of other existing and future regulations. Moreover, the Climate Act in ECL Section 75-0105 requires NYSDEC to issue an annual Statewide Greenhouse Gas Emissions Report to help measure progress towards reaching the limits. Additionally, NYSDEC served as co-chair of the State Climate Action Council, which

considered the Zero Emission by 2040 Target as part of the Final Scoping Plan completed in December 2022. Finally, in making permitting and other administrative decisions, NYSDEC – like all State agencies and authorities – must consider consistency of such decisions with the Statewide greenhouse gas emission limits.

As described below, each of these actions by NYSDEC followed the greenhouse gas accounting methodology set forth under the Climate Act, specifically the ECL and Part 496.

## **II. NYSDEC Statewide Greenhouse Gas Emissions Limits Under the Climate Act**

The Climate Act, as provided in ECL Section 75-0107, directed NYSDEC to establish a statewide greenhouse gas emissions limit for the years 2030 and 2050 equal to sixty (60) percent and fifteen (15) percent of gross 1990 emissions (40x30 and 85x50), respectively. NYSDEC promulgated Part 496 in 2020 to implement this requirement by establishing an estimate of total statewide greenhouse gas emissions in 1990, or a baseline, and then establishing greenhouse gas emission limits as a percent of that baseline. Both the 1990 baseline and the statewide greenhouse gas emission limits for 2030 and 2050 are expressed in millions of metric tons of *gross* carbon dioxide equivalent as defined by the Climate Act.

### **A) NYSDEC Basis for Gross Emissions Determination in Part 496**

As explained in the 2020 rulemaking to adopt Part 496 and implement the ECL, in determining the scope of the greenhouse gas emission sources and greenhouse gases to be included in the estimation of 1990 emissions, NYSDEC followed the requirements in ECL Section 75-0107 and other related provisions of the Climate Act, specifically Sections 75-0101 (Definitions) and 75-0105 (statewide greenhouse gas emissions report), and other guiding language in the Climate Act. NYSDEC assessed *gross* greenhouse gas emissions – as opposed to *net* greenhouse gas emissions – in Part 496 based on Climate Act requirements, language, and structure.

For example, as noted in the documents supporting the 2020 rulemaking, the Climate Act refers to two greenhouse gas emission targets for 2050, only one of which is referred to as a “net” zero emission goal. Part 496 addressed only one of these two targets for 2050: the 85x50 statewide greenhouse gas emission limit established in ECL Section 75-0107. As NYSDEC further explained as part of the 2020 rulemaking process, Part 496 did not directly address the separate net zero emission goal set forth in ECL Section 75-0103(11). The 100 percent net greenhouse gas emission reduction goal, or a goal of attaining net zero greenhouse gas emissions, was not part of the Legislature’s direction to NYSDEC for promulgating the statewide emission limits in ECL Section 75-0107. Similarly, the 100% greenhouse gas emission reduction goal in Section 1.4 of the Climate Act is a separate provision distinct from that which directed NYSDEC to establish the 40x30 and 85x50 emission limit through Part 496.

By contrast, the Climate Act directed the Climate Action Council to prepare a Scoping Plan for meeting *both* “the statewide greenhouse gas emission limits . . . *and* for the reduction of emissions beyond eighty-five percent, net zero emissions in all sectors of the economy.” ECL Section 75-0103(11) (emphasis added). In other words, while the Scoping Plan developed by the

Climate Action Council addressed the net zero emissions by 2050 goal as well as the 85% by 2050 Statewide emission limit, NYSDEC's Part 496 addressed only the latter.

Moreover, in adopting Part 496, NYSDEC discussed how additional statutory provisions in the Climate Act provided further support for this distinction between (1) the 40x30 and 85x50 requirements, and (2) the separate net zero emission goal. For example, the Climate Act provides that "the [NYSDEC] may establish an alternative compliance mechanism to be used by sources subject to greenhouse gas emissions limits to achieve net zero emissions." ECL Section 75-0109(4)(a). Furthermore, "the use of such mechanism shall account for not greater than fifteen percent of statewide greenhouse gas emissions estimated as a percentage of" 1990 emissions. ECL Section 75-0109(4)(b). Any greenhouse gas emission offsets approved by the NYSDEC under the alternative compliance mechanism provision must meet certain requirements and are defined as "a deduction representing one metric ton of carbon dioxide equivalent emissions, reduced, avoided, or sequestered by a greenhouse gas emission offset project from a measured baseline of emissions." ECL Section 75-0101(9).<sup>1</sup> Taken together, NYSDEC concluded as part of the Part 496 rulemaking in 2020 that these provisions of the Climate Act – largely in the ECL – provide that the 40x30 and 85x50 emission limits are to be measured based on an estimated baseline of *gross* 1990 statewide emissions, while the remaining 15 percent of emissions to achieve net zero may be accounted for on a *net* basis.

#### B) Applications of Statewide Greenhouse Gas Emission Limits under Climate Act

Pursuant to the structure of the Climate Act, the statewide greenhouse gas emission limits established in ECL 75-0107 and reflected in Part 496 have a variety of applications for NYSDEC and the State. For example, pursuant to the Climate Act in ECL Section 75-01019, NYSDEC must promulgate regulations to ensure attainment of the Statewide greenhouse gas emission limits. Therefore, given the direct connection between these two ECL provisions, NYSDEC regulations will ensure attainment of the statewide greenhouse gas limits as measured on a gross basis, and to otherwise be consistent with the greenhouse gas accounting methodology set forth in the Climate Act and Part 496. This includes the NYCI program that is currently under development, as well as other regulatory actions taken by NYSDEC as part of its overall portfolio of policies to meet the statewide greenhouse gas emission limits.

Moreover, as described in more detail below, the annual statewide greenhouse gas emissions report, or inventory, prepared by NYSDEC pursuant to ECL Section 75-0105 followed the gross emissions methodology in helping to measure overall progress towards the statewide greenhouse gas emission limits. NYSDEC will continue to adhere to this format in future annual inventories, as required by the Climate Act.

Regardless of the outcome of this proceeding with respect to PSL Section 66-p, certain emissions would still need to be accounted for pursuant to the ECL. This may include an obligation to obtain allowances for such emissions under NYCI or some other NYSDEC regulatory requirement to contribute to emission reductions and ensure attainment of the

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<sup>1</sup> "Greenhouse gas emission offset projects" are further defined as including natural carbon sinks, carbon capture and sequestration, and other types of projects. ECL Section 75-0101(10).

statewide greenhouse gas limits. Similarly, even if certain emissions are not accounted for under PSL Section 66-p, they would need to be reflected in NYSDEC's annual inventory report.

### **III. NYSDEC Statewide Greenhouse Gas Emissions Report**

The Climate Act directs NYSDEC to issue an annual report on statewide greenhouse gas emissions. ECL Section 75-0105. The statewide greenhouse gas emissions report is a comprehensive evaluation of statewide greenhouse gases economywide, informed by data relating to the use of fossil fuels by sector for electricity generation, transportation, heating, and other combustion purposes, as well as fugitive and vented emissions from systems associated with the production, processing, transport, distribution, storage, and consumption of fossil fuels. The report also includes greenhouse gas emissions associated with non-fossil fuel sources, including waste incinerators, biomass combustion, landfills and landfill gas generators, and anaerobic digestors, as well as greenhouse gas emissions associated with manufacturing, chemical production, cement plants, and other processes that produce non-combustion emissions.

As required by the Climate Act, the annual statewide greenhouse gas emissions report provides clearly explained methodology and analysis used to calculate statewide greenhouse gas emissions. NYSDEC provides calculations based on gross emissions and uses accounting required by the Climate Act and used in the promulgation of Part 496. These calculations are also utilized for purposes of greenhouse gas emission factors referenced as part of NYSDEC's policies implementing Climate Act Section 7(2).<sup>2</sup>

While other accounting is provided in the annual greenhouse gas emissions report for informational purposes and considering other directives, including the net zero goal, the State's official greenhouse gas emission tracking of the Climate Act greenhouse gas emission limits is based on gross greenhouse gas emissions. As such, the gross greenhouse gas emissions that are included in the annual statewide greenhouse gas emissions report are used to evaluate whether New York State will meet its greenhouse gas emissions reduction requirements under the Climate Act. ECL Section 75-0107(1). Therefore, any net greenhouse gas emissions accounting for zero emissions under Section PSL 66-p would not necessarily be included in the statewide greenhouse gas emissions report and would not be directly relevant to assess compliance with the statewide greenhouse gas emission limits in ECL Section 75-0107 and Part 496.

### **Conclusion**

As described above, whatever decision PSC makes with respect to the definition of "zero emissions" under PSL Section 66-p, the Climate Act charges NYSDEC with implementing various provisions of the ECL through regulation and otherwise. Moreover, all State agencies and authorities must follow Climate Act Section 7 in the context of administrative decisions.

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<sup>2</sup> NYSDEC, Commissioner's Policy 49 (CP-49), *Climate Change and DEC Action* (Revised December 14, 2022), available at: <https://dec.ny.gov/regulatory/guidance-and-policy-documents/climate-change-guidance-documents>; NYSDEC, Division of Air Resources 21 (DAR-21), *Climate Leadership and Community Protection Act and Air Permit Applications* (December 14, 2022), available at: <https://dec.ny.gov/regulatory/guidance-and-policy-documents/air>

NYSDEC has taken a variety of actions to implement the Climate Act and associated provisions of the ECL, including the adoption of Part 496 with certain greenhouse gas accounting methodologies. As required by law, NYSDEC will continue to adhere to these methodologies as part of NYCI program development and other future regulatory actions, annual greenhouse gas inventories, and administrative decisions. NYSDEC appreciates the PSC's consideration of the potential implications of this proceeding under the Climate Act and the opportunity to file these comments. NYSDEC looks forward to continuing to work with the PSC and DPS Staff on this matter and on the State's overall implementation of the Climate Act.