NEW YORK STATE
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 INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

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Pursuant to the Secretary's notice soliciting comments issued on June 30, 2020 in the above-captioned case,[1] Independent Power Producers of New York, Inc. ("IPPNY") hereby comments on the *White Paper on Clean Energy Standard Procurements to Implement New York's Climate Leadership and Community Protection Act* that Department of Public Service ("DPS") Staff and the Staff of the New York State Energy Research Development Authority ("NYSERDA") filed with the New York State Public Service Commission ("Commission") on June 18, 2020, in this case.[2]

IPPNY is a trade association representing companies involved in the development of electric generating facilities, including renewable resources, the generation, sale, and marketing of electric power, and the development of natural gas and energy storage resources in the State of New York. IPPNY member companies produce more than 60% of New York's electricity, utilizing almost every generation technology available today, such as wind, solar, natural gas, oil, hydro, biomass, energy storage, and nuclear.[3] IPPNY's fundamental interest is in the continued

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[1] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Notice Scheduling Technical Conference and Soliciting Comments (June 30, 2020) ("June Notice").

[2] Case 15-E-0302, *supra*, White Paper on Clean Energy Standard Procurements to Implement New York's Climate Leadership and Community Protection Act (June 18, 2020) ("White Paper").
2020)

[3] IPPNY's comments do not necessarily represent the position of its individual members.

development and enhancement of reliable and efficient integrated regional wholesale competitive electricity markets. With respect to the White Paper, IPPNY's interest lies mainly in ensuring that the Commission's Clean Energy Standard ("CES") program is implemented in a manner that is consistent with, and does not undermine in any respect, the continued functioning of non-discriminatory, competitive energy markets in New York and its surrounding regions.

The CES program was initially created by administrative decree.[4] The White Paper proposes a regulatory structure to revise the CES program to now implement the requirements mandated by the Climate Leadership and Community Protection Act,[5] enacted in 2019 and codified in Section 66-p of the New York Public Service Law, which directs the Commission to "establish a program" whereby: (1) jurisdictional load serving entities ("LSEs") must secure adequate amounts of renewable energy resources to serve at least 70% of load in 2030 (referred to as the "70 by 30 Target"), and (2) there are zero emissions in 2040 associated with electrical demand (referred to as the "2040 Zero Emission Target").[6] To meet the 70 by 30 Target, the White Paper proposes to continue using the regulatory and procurement structure that the Commission established in its CES Order in 2016, with certain modifications to align with the Climate Act requirements.[7]

IPPNY's comments on the White Paper are provided to address the Commission's request to respond to certain questions posed in the June Notice. IPPNY also comments on one topic that was not addressed by the questions concerning the eligibility of fuel cells.

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[4] Case 15-E-0302, *et al*., *supra*, Order Adopting a Clean Energy Standard (Aug. 1, 2020) ("CES Order").

[5] Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney) ("Climate Act").

[6] Public Service Law ("PSL") § 66-p (2). The Climate Act also specifically requires the entry of 3,000 MW of energy storage resources by 2030, 6,000 MW of photovoltaic solar generation by 2025, and 9,000 MW of offshore wind generation by 2035. PSL § 66-p (5).

[7] White Paper at 2.

Question 2. Section II.c.1 outlines a procurement trajectory under Tier 1 of the CES needed to meet the 70 by 30 Target and proposes several changes to NYSERDA's procurement process.

c. Section II.c.1 proposes reforms to the NYSERDA procurement process intended to account for curtailment and other interactions within the State's portfolio of renewable generation. Are the proposed reforms sufficient? Should the Commission consider additional reforms, such as a procurement policy that, in agreements resulting from future procurements, would make no payment to the generator for any REC generated in hours and at locations where the applicable LBMP is negative?

The White Paper correctly identifies a significant, existing system obstacle that, unless resolved, will prevent the State from ultimately meeting the 70 by 30 Target.[8] As the scale of renewable generation grows, transmission bottlenecks will increasingly impede the ability of these generators to dispatch their renewable output onto the grid. This growing threat of curtailment creates uncertainty for owners of existing, and developers of new, renewable resources. Generators that interconnect to the grid pursuant to the New York Independent System Operator Inc.'s ("NYISO") Minimum Interconnection Standard ("MIS") under conditions where their energy is fully dispatchable have no assurances that their output will not be curtailed in the future by the subsequent interconnection of another renewable generator. Under the MIS, if a transmission constraint causes a thermal violation that prohibits two generators from operating at the same time but can be resolved through curtailment, the second unit will be permitted to interconnect without making upgrades and the unit with the lowest energy offer will be selected while the other unit will be curtailed. As renewable resources have zero marginal costs, an existing renewable generator with a Renewable Energy Credit ("REC") contract faces the risk that a later-constructed renewable generator will displace its output solely because it was able to win a higher-priced REC contract in a subsequent REC solicitation or

[8] *See* White Paper at 27.

secure a bundled contract. System conditions that permit renewable-on-renewable curtailments must be corrected through revisions to the interconnection rules to meet the State's clean energy mandates.

The White Paper proposes that the Commission authorize NYSERDA, in consultation with DPS Staff, the NYISO and the transmission owners, to broaden the portfolio risk factors it assesses on the portfolio of bid facilities that have been ranked preliminarily by the Technical Evaluation Panel ("TEP").[9] One new proposed risk factor would include the anticipated impact of curtailments portfolio-wide.[10] The White Paper states that NYSERDA would publish a description of the portfolio risk factors in its solicitations "at a sufficient level of detail to allow bidders to make any responsive adjustments to their projects that may be possible" and "would also publish a description of how the portfolio risk factor would be used in the selection process."[11] In addition, the White Paper proposes NYSERDA may reject proposals that are found not presently viable taking into account economic factors and regulatory risks.[12]

IPPNY supports the White Paper proposal that NYSERDA must adequately account for potential dispatchability issues and curtailment effects in its bid evaluation process and should consult with DPS Staff, the NYISO and the transmission owners to ensure its analyses are as fulsome as possible. To promote investor and developer confidence in NYSERDA's programs, any bidding review parameter that has the potential to cause NYSERDA to reject a bid based on potential curtailment considerations due to project viability, or otherwise, should be clearly and transparently established in the solicitation materials and should provide a right for rejected

[9] White Paper at 32–34.

[10] *Id*. at 33.

[11] *Id*.

[12] *Id*. at 29–30.

bidders to appeal NYSERDA's rejection in a timely manner. However, the White Paper's proposal that NYSERDA acquire RECs generated during hours with negative LBMPs without compensation is ill-suited to address the curtailment issue, and thus, IPPNY cannot support it in this context.[13] Rather than seeking to penalize individual developers, some of which cannot control how the system subsequently changes after they are interconnected to it, the Commission should direct DPS Staff to work with the NYISO to modify the MIS rules so that the dispatchability of existing and contracted renewable facilities is not threatened with curtailment by subsequently interconnected renewable facilities. Given the accelerated time frames set forth in the Climate Act and the need to have land-based resources under development well before 2030, IPPNY urges the Commission to emphasize that any necessary tariff revisions must be effective before the beginning of the next REC solicitation process.[14]

Question 4. Section III.c.3 proposes a new Tier 4 to the CES intended to increase the penetration of renewable energy consumed in zone J.

a. Is there a need to explore additional policy mechanisms under the CES to achieve that goal?

Implementation of the NYISO's proposal to internalize the value of carbon emissions in wholesale energy prices (the "Carbon Adder") would provide the most efficient mechanism to incent the development of resources in the locations where they are most needed to meet the State's goals. As designed, the NYISO's proposed Carbon Adder would much more effectively address the State's policies by adding the value of carbon to the energy bids of carbon-emitting

[13] White Paper at 34.

[14] The White Paper recommends annual Tier 1 procurements at the level necessary to achieve the 70 by 30 Target. *See* White Paper at 28. Failure to expeditiously complete revisions to the MIS rules will result in inefficient bidding and, as the conditions on the system grow increasingly tighter, could well preclude developers from submitting bids in the NYSERDA solicitations. Competition, at best, will be stymied and may ultimately be prevented.

resources.[15] The NYISO's proposed tariff amendments provide that the Commission would set the Carbon Adder price to be included in the energy prices. By the express provisions of the Climate Act, the State—through the New York State Department of Environmental Conservation ("DEC")—has the ability to establish the social cost of carbon,[16] and thus, significantly reduce, if not eliminate, the need for out-of-market subsidies to incent the development of most renewable resources or energy storages resources by effectively structuring the Carbon Adder to reflect the value of providing carbon-free generation. Adoption of carbon pricing would provide a market-based mechanism to most efficiently recognize and compensate for the environmental and local reliability benefits the White Paper proposes to incent through the new Tier 4.

b. Will the two additionality requirements included in the proposal achieve their purposes of ensuring that hydropower resources eligible under Tier 4 would be additional to baseline generation? Are the additionality requirements appropriately restrictive? Is the proposed three-year historical baseline reasonable?

c. Will the proposal's delivery requirement achieve its goal of ensuring that Tier 4 resources provide incremental renewable energy into zone J? What options does the Commission have for verifying that Tier 4 resources are delivering into zone J using new transmission interconnections?

Although the White Paper's objective of preventing a back-fill of existing hydropower by fossil fuel units is commendable, the two proposed additionality requirements are insufficient to accomplish the stated objective. We first address why allowing impoundment hydropower that is under construction to support a climate change initiative and be eligible for Tier 4 is unjustifiable, then recommend the modifications that are required to achieve the stated objective

[15] *See generally*, Susan F. Tierney & Paul J. Hibbard, *Clean Energy in New York State: The Role and Economic Impacts of a Carbon Price in NYISO's Wholesale Electricity Markets*, Analysis Group (Oct. 3, 2019) ("Analysis Group Report"), https://www.nyiso.com/documents/20142/2244202/Analysis-Group-NYISO-Carbon-PricingReport.pdf/81ba0cb4- fb8e-ec86-9590-cd8894815231?t=1570098686835.

[16] Climate Act § 2; Environmental Conservation Law § 75-0113 (mandating the DEC to "establish a social cost of carbon for use by state agencies, expressed in terms of dollars per ton of carbon dioxide equivalent").

of ensuring that the Tier 4 credits can only be used to compensate incremental production from existing hydropower.

1. The Proposal that New Impoundment Hydro Under Construction Be Eligible for Tier 4 is Contrary to Long-Standing Policy and Cannot Be Used To Support The State's Climate Change Mandates

The Commission should not adopt the proposal that new impoundment hydropower under construction be eligible for Tier 4 (the "New Impoundment Hydro Proposal") because it is contrary to the Commission's long-standing findings that new impoundment hydro cannot qualify for incentives under the Renewable Portfolio Standard ("RPS") and the CES. The Commission's holdings have been in place for over 15 years. Four years ago, the Commission justifiably remained steadfast in its determinations on this front, denying Hydro Quebec's ("HQ") ill-based request to reconsider this policy in the CES.[17] In its subsequent order also denying HQ's rehearing request of its decision to reaffirm its earlier prohibition, the Commission ruled:

> HQ's argument that exclusion of large scale hydroelectric generation and all hydroelectric involving storage impoundment is not supported by the record is not correct. The Order specifically discusses excluding large scale hydro and impoundments including reference to *extensive debates* previously held on the issue during development of the RPS program. HQ argues the record in the RPS Case is too old to rely on, but HQ does not offer more recent reports, scientific papers or any other demonstration to show that the environmental concerns from 12 years ago are no longer relevant. *Moreover, the record in the RPS Case, upon which the Commission relies, consists of considerable information regarding the environmental impacts of large-scale hydroelectric power and impoundment.* Specifically, the Final Generic Environmental Impact Statement (RPS Final GEIS) in Case 03-E-0188 has an extensive discussion of the impacts including water quality impacts related to temperature, dissolved oxygen, and stratification; aquatic

[17] *See* Case 15-E-0302 *et. al*., *supra*, Petition for Rehearing of H.Q. Energy Service (U.S.) Inc. (Aug. 30, 2016) at 4 (requesting "that the CES Order be revised on rehearing to include existing baseline large-scale hydro generation, including impoundment, as a resource eligible to receive value or some form of compensation for environmental attributes that New York receives").

> and terrestrial impacts on fishery resources, impacts to wildlife and botanical resources including total transformation of riparian communities, changes to bird habitats and loss of habitat for wildlife such as beaver and otter. Further, many of the party submissions in that case include detail [sic] discussion of the environmental impacts of impounded hydroelectric facilities. If in the future HQ can produce evidence countering the impact of impoundments, the Commission will consider it in one of the triennial reviews.[18]

The Commission should reject the New Impoundment Hydro Proposal for all the reasons that the Commission prohibited new impoundment hydro from being eligible under the RPS program in 2004 and continued to ban its participation in the CES program in its CES Order and CES Rehearing Order. To be clear, as the Commission has established, RECs are environmental attribute incentive payments that were designed to provide compensation for a service that is not currently valued in the NYISO's competitive markets.[19] DPS and NYSERDA Staff have not provided any justification why the Commission's long-standing policy should be changed, much less any evidence sufficient to counter the extensive evidence in the record of these proceedings concerning new impoundment hydro's numerous and significant adverse impacts. Indeed, no demonstration has been made at all that the adverse environmental impacts caused by impoundment hydro addressed in the RPS case are no longer relevant or have in any way been ameliorated. While New York City and the Governor have issued statements supporting the proposed delivery of hydropower over the proposed Champlain Hudson Power Express ("CHPE") transmission line to New York City,[20] that does not require, or even suggest, that the Commission must change its policy to allow new impoundment hydro to qualify for incentives

[18] Case 15-E-0302, *supra*, Order on Petitions for Rehearing (Dec. 15, 2016), at 6–7 (emphasis added).

[19] *See id*. at 23 (recognizing that "REC revenues also compensate generators for environmental attributes that are not valued by market revenues").

[20] *See* Danielle Cruz, *New York's Hydropower Plan Stirs Concerns Over Impact on Waterways*, City Limits (Aug. 12, 2020), https://citylimits.org/2020/08/12/new-yorks-hydropower-plan-stirs-concerns-over-impact-on-waterways/.

under the CES. This fundamental fact is true not only as to existing impoundment hydro but also to new impoundment hydro currently under construction that was previously rejected as a candidate for environmental attribute incentive payments.

As noted in the White Paper, hydroelectric resources eligible under Tier 1 of the Renewable Energy Standard are limited to (i) the incremental production associated with upgrades to existing facilities without new storage impoundments, and (ii) low-impact run-of-river projects.[21] If the Commission believes a broader set of hydropower resources should be eligible under Tier 4, only incremental production that can be encouraged by Tier 4 incentives—that is not simply a redirection of power that would have been supplied in the absence of such incentives—should be eligible for Tier 4. Unless a supplier is upgrading its existing impoundment hydro to produce incremental energy or can utilize water that had been spilled historically due to lack of adequate transmission to deliver the associated energy, there is, in fact, no basis to provide incentives to existing impoundment hydro or impoundment hydro already under construction because production from these facilities and any associated carbon emissions benefits already will occur in the absence of such incentives.

2. The Two Requirements are Insufficient to Achieve the Stated Objective

Even were there evidence in this proceeding to support a Commission decision to reverse its past determinations in light of changed circumstances—which, indisputably, there is not—the two proposed requirements, the supplier energy baseline and the supplier greenhouse gas ("GHG") baseline, reflect critically important measures to ensure that HQ and other impoundment hydro suppliers do not "greenwash" hydropower to New York City by redirecting power it would have otherwise sold to other customers. DPS and NYSERDA Staff correctly

[21] White Paper at 11.

determined that these requirements are needed to ensure "energy associated with the Tier 4 RECs is not being backfilled by fossil fuel-fired resources supplied to the historic recipient of such energy."[22] The Commission should make clear that historic recipients that are assessed must include not just other recipients in the New York Control Area ("NYCA"), but also system load and other recipients in export markets, including recipients that have already contracted for future deliveries, as those markets are most likely to be back-filled with fossil fuel units if energy is diverted into New York City. IPPNY is particularly concerned that a long-term contract already entered into by HQ to sell 9.45 TWh per year of firm power to the ISO-NE market may not be properly accounted in determining whether new deliveries to New York pursuant to the proposed Tier 4 will truly be incremental.[23]

Moreover, as defined, the GHG baseline definition is overly broad. In particular, the GHG baseline and calculation of incremental renewables should be limited to energy the supplier and its affiliates generate from the power plants that they own. Allowing for purchases to be included would require NYSERDA to evaluate the details of power purchase agreements and ownership rights as well as power sales agreements that may well not be straightforward to ensure that the supplier truly has incremental renewable energy that is not obligated to incremental load or for sale into New York or another market under contract. As this information is not public in most cases—state-owned companies such as HQ that are required to report contract information in its SEC Form 18-k are an exception—suppliers should not be required to provide commercial information on their purchase and sales agreements. Instead, the

[22] White Paper at 49.

[23] Press Release, Hydro Québec, Another Important Milestone for Hydro-Québec and Lower Carbon Emissions for New England – Energy Supply Contracts Get Green Light From Massachusetts (June 26, 2019), http://news.hydroquebec.com/en/press-releases/1516/energy-supply-contracts-get-green-light-from-massachusetts-another-important-milestone-for-hydro-quebec-and-lower-carbon-emissions-for-new-england/.

metrics for renewable energy should only be associated with physical ownership and operation of eligible hydroelectric power plants, and not a purchase or resale of renewable energy from a third party.

As proposed, the two requirements proffered under the proposal only partially address what must be required to ensure that the Tier 4 hydropower delivered to New York City is not power that is simply redirected from other customers, and, therefore would have been produced in the absence of Tier 4 incentives. Additional specificity is required to ensure that energy produced by a supplier's hydropower facilities is truly incremental and deserving of a Tier 4 credit as opposed to a redirect of existing impoundment hydropower enabled by an acquisition or build-out of a new renewable facility.

3. The Additionality Requirement Must Specify Total Generation from Hydro Plants

The total GHG baseline additionality requirement is too lax and creates significant opportunity for gaming. Instead of using total renewables, which should be offset by incremental load and contractual obligations, a simpler additionality requirement is needed to ensure that incremental generation from existing hydropower plants occurs to avoid compensating a resource that is not eligible for REC compensation under the Commission's RES program. The following three examples illustrate the problem with the proposed GHG metric.

EXAMPLE 1: An out-of-State supplier acquires an existing wind facility to serve its own retail customer load. This would allow the supplier to release a commensurate level of hydropower to redirect it into New York City and receive Tier 4 REC incentives. Under the proposed GHG baseline, total incremental renewable production would increase above the GHG baseline, allowing existing hydropower to qualify for Tier 4 RECs commensurate with the production of the wind facility. Incremental energy into NYCA would meet the additionality requirement. However, such a scheme would violate the spirit of the RES because existing wind power located and utilized out-of-State is not eligible under New York's existing or proposed REC programs, including the proposed Tier 4 program.

EXAMPLE 2: If the acquisition of the existing wind facility in Example 1 was used to meet incremental load growth, the supplier could divert energy from another market for sale into New York City to meet the additionality requirement into NYCA. Under the proposed GHG baseline, the total incremental renewable production would increase above the GHG baseline along with sales into NYCA, allowing existing hydropower to qualify for Tier 4 RECs. The diversion of energy from another market up to the amount of incremental renewable energy generation under the GHG baseline would be compensated despite potential carbon emissions in another market resulting from that activity. Such a scheme would violate the spirit of the Tier 4 proposal because the energy diverted from another market would have to be backfilled with other energy, including potentially carbon-emitting resources. The incremental renewable energy would have no net reduction in carbon emissions (because it is serving new load) and the diversion could ultimately increase total carbon emissions, a clear conflagration of the State's climate change initiatives.

EXAMPLE 3: Adopting a policy that would provide incentives to existing out-of-State impoundment hydro also could be contrary to the proposed Tier 2 program. A supplier could acquire an out-of-State run-of-river facility for energy sales and delivery into New York City. This existing facility would increase the incremental GHG metric of the supplier and increase deliveries into NYCA, earning a Tier 4 credit. The proposed Tier 2 program would not provide compensation for RECs from existing run-of-river hydro resources located outside of New York State, but investment in that resource effectively could receive a Tier 4 credit. The proposed Tier 2 program appropriately seeks to retain in-State resources to maintain the RES baseline. As was established with the proposed Tier 2 program, New York State ratepayers should not subsidize existing Canadian-government owned run-of-river hydro resources irrespective of whether it is under Tier 2 or it is indirectly under Tier 4.

4. Account for Incremental Impoundment Hydro on a Unit-Specific Basis

To avoid the potential for such shell games and compensation inconsistent with the intent of the proposed rules described in the above examples, the Commission should modify the GHG baseline requirement to impose unit-specific baselines for each of the supplier's existing hydro facilities. To qualify for Tier 4 RECs, the supplier must show that the power sold to New York City over a new transmission line connected to Zone J is delivered from a specific unit, is incremental to a unit's specific baseline, and that the total amount delivered is less than or equal to the total net incremental hydroelectric energy produced by plants owned and operated by the supplier. The supplier must also demonstrate that the RECs associated with that specific unit's

incremental power have not been, and will not be, supplied to any other customer as part of a load obligation or contractual obligation.

5. Adjust for Losses

The Commission should also require that the unit-specific baseline and future calculations be net of system losses. For example, HQ's transmission system incurs significant losses because the plants are located so far away from load centers and the system has significant inefficiencies tied to distance, line sag, ice and other factors. HQ's Open Access Transmission Tariff charges a 6.1 percent loss factor for transmission for point-to-point service.[24] Taking into account transformer losses as the energy is converted from Québec's asynchronous system to NYISO, as well as the losses associated with the delivery across the proposed CHPE transmission line, deliveries into Zone J would be reduced by potentially 10 percent or more. If the amount to be delivered into Zone J is the metric for purposes of Tier 4 credits, the comparison can only be valid if the calculation of the baseline and incremental impoundment hydro reflects the same level of losses. For example, if the incremental hydro production at the impoundment hydro plants eligible for Tier 4 RECs was calculated to be 4 TWh, only 3.6 TWh should be credited as a Tier 4 delivery, assuming a 10 percent total loss factor. An accurate loss factor should be allocated to each facility to ensure that hydro plants that incur higher losses are not over-compensated for incremental production at the plant site.

6. Bank Credits and Debits

[24] Hydro-Québec OATT § 15.7.

Hydrologic conditions are notoriously variable. HQ notes this risk frequently in its Annual Reports.[25] There is no justification for New York bearing an asymmetric risk that water conditions will not deliver incremental energy over the long-run. Although impoundment hydro could generate excess energy in one year that could justify a Tier 4 credit, droughts in the next few years would create a deficit against a hydroelectric baseline. Furthermore, because impoundment hydro can be stored and released over a multi-year management strategy, total hydro energy metrics can be increased across years to maximize profitability. As a result, any Tier 4 credits and debits should be banked and settled up between the parties so that New York is not paying a premium in one year for incremental energy that is wiped out the next year due to drought conditions.

7. The Baseline Should Use 2018, Not an Average of Multiple Years

Finally, the Commission should calculate the baselines based on total renewable and unit-specific production that occurred during the 2018 calendar year. Based on publicly available information, 2018 was HQ's highest production year over the past five years as measured by HQ's total energy requirements[26] and best represents the capability of all of HQ's existing impoundment hydro and delivery under the existing transmission system configuration. Using a three-year average, as proposed in the White Paper,[27] would understate HQ's existing production because it would not adequately capture the full output from HQ's Romaine-3 project which

[25] *See Annual Report 2019*, Hydro-Québec (2019) ("HQ Annual Report 2019"), at 15 (citing global warming and extreme weather as factors that increase climate-related uncertainties and vulnerabilities for HQ's infrastructure and operations).

[26] *Id*. at 98 (energy requirements consist of kilowatthours delivered within Québec and to neighboring systems, and is reported by HQ in its annual report); *see also* Hydro-Québec, For Foreign Governments and Political Subdivisions Thereof (Form 18-K) (Mar. 27, 2020), at 7 (SEC Form disclosing HQ's total energy requirements by year).

[27] White Paper at 49.

came on-line in late 2017.[28] Thus, if HQ's total renewable production prior to and after the new generator's entry is averaged, it would reduce the baseline unreasonably below HQ's actual renewable production. As demonstrated above, facilities under construction, such as HQ's Romaine-4, should not be eligible for Tier 4 as they would be incremental to the baseline and would reflect additionality associated with a new impoundment in violation of the Commission's long-standing determinations prohibiting new impoundments from receiving incentives.

IPPNY supports the NYISO approach for verifying delivery into Zone J and the White Paper's proposal to use the New York Generation Attribute Tracking System ("NYGATS") to ensure the type and quality of power delivered into Zone J.[29] IPPNY further supports the White Paper proposal that NYSERDA require that any entity seeking certification to create Tier 4 RECs in NYGATS (i) "provide the detailed historical data necessary to determine [the baselines]" and (ii) "consent to the use of any tracking system and/or auditing regime that–in NYSERDA's judgment based on the circumstances of the individual supplier–may be necessary to verify continued compliance with the delivery and additionality requirements over the contract performance period."[30] To ensure transparency of these certification requirements, the Commission should require NYSERDA to file a detailed implementation plan for public comments proposing the specific historical data that NYSERDA will require and the tracking system/auditing regime that NYSERDA will use. IPPNY recommends that Canadian suppliers of Tier 4 RECs be required, as a condition of eligibility, to track the production of all of their and

[28] HQ Annual Report 2019 at 10.

[29] White Paper at 49–50.

[30] *Id*.

their affiliates' generation with the North American Renewables Registry and demonstrate that all of those tracked tags for attributes are compatible with NYGATS.

Furthermore, if a supplier's renewable energy production is to be sourced via contract with a sub-supplier, baselines must also be calculated for the sub-supplier and an offset for both load growth and contractual sales obligation must be included to the purchases. Including purchases of renewable energy in the baseline and incremental energy measurement creates significant room for gaming between affiliates and third parties because NYSERDA would not have a full and complete view of the contractual position of the supplier. Although a purchase of renewable energy from a third party may appear to create incrementality, a resale via incremental sales into other markets or under a long-term contract would offset the amount of incremental energy actually provided.

e. The White Paper proposes a possible alternative under which the price for the Tier 4 REC could be set via standard offer or directly negotiated between NYSERDA and a potential developer. Under what circumstances would such an approach be reasonable? If pursued, what policies and procedures should the Commission establish to guide such an approach?

The Commission should reject the White Paper's proposal that NYSERDA be authorized to award Tier 4 REC contracts without conducting a competitive solicitation process. Noting the "central challenge" of increasing the penetration of renewable energy to Downstate consumers and the "even more stark" disparity vis-à-vis New York City, the White Paper proposes the creation of a new Tier 4 to address Zone J renewable energy consumption.[31] During the July Technical Conference, DPS Staff confirmed offshore wind resources, incremental to the 9,000 MW level mandated by the Climate Act, could be eligible to participate in Tier 4 and sought comments on that point.

[31] *See* White Paper at 45.

Tier 4 seeks to incentivize renewable energy consumption in New York City. All resources capable of providing that service should be eligible to participate in Tier 4 procurements to produce the most efficient and cost-effective result. Likewise, competitive solicitations have been a core component of the RPS and CES and have proven to be an effective means to ensure the Commission's policies are met at least cost where reliance is placed on solicitations in lieu of market-based mechanisms such as carbon pricing. Captive ratepayers should not be saddled with long-term contracts that have not been subject to the rigors of a competitive market process for any tier.[32] Thus, the Commission should reject these procurement "alternatives" and rule Tier 4 will be subject to a competitive solicitation process open to all resources able to provide these environmental attributes.

Question 5. Section II.c.4 describes a petition (Tier 2 Petition) NYSERDA filed on January 24, 2020 proposing a Competitive Tier 2 Program for baseline renewable generation.

a. The Tier 2 Petition proposed to size the overall program to include the majority of eligible generation, but to limit annual procurement volumes so as to promote competition and lower-cost bids. Unpurchased RECs would be available for voluntary market purchase by CCAs, ESCOs, or any other interested entities. Should NYSERDA be authorized to re-sell Tier 2 RECs to such entities?

In the CES Order, the Commission chose not to heed the dire warnings that implementing the CES program without DPS Staff's proposed provisions to retain existing renewable generation in-State would lead to the exodus of that generation[33]—a result that has come to pass. NYSERDA's recently issued CES Triennial Review revealed that exports of baseline wind, biogas, and non-NYPA hydroelectricity totaled 1.67 TWh in 2018, which has reduced the State's

[32] *See* Press Release, IPPNY, Labor, Business and Environmental Groups to Mayor de Blasio: Use Open, Competitive Process to Grow Clean Renewable Electricity (Nov. 19, 2019), https://www.ippny.org/page/press-releases-64/news/labor-business-and-environmental-groups-to-mayor-de-blasio-use-open-competitive-process-to-grow-clean-renewable-electricity-727.html.

[33] CES Order at 115–117.

baseline by 1.15 TWh since 2014.[34] In short, the State is going backwards, digging a deeper hole to achieve its climate change initiatives. As a result, the Legislature sought to address this issue and the Governor issued a directive to manage its resolution which led to NYSERDA's submission of the Tier 2 Petition.[35] As IPPNY noted in its comments submitted on Tier 2 on May 4, 2020, in order for the State to achieve the 70 by 30 Target, the significant reduction in the baseline from in-State resources exporting their power out-of-State should be rectified expeditiously to preserve the pre-existing CES baseline.[36]

The White Paper proposes to consolidate the Commission's various CES program-related efforts back into the one CES proceeding. During the Commission's informational session on its inter-related Accelerated Renewable Energy Growth and Community Benefit Act-based transmission upgrade efforts, Commission General Counsel Robert Rosenthal reported that the Commission is expected to address the White Paper at its October session. IPPNY agrees the CES program should be consolidated but urges the Commission to maintain the categories among and within the tiers (*e.g.*, land-based and offshore in Tier 1) and to stage the timing of the procurements under the different tiers as required. To that end, the Commission should rule on the Competitive Tier 2 program as soon as possible but no later than in its expected October 2020 order addressing the White Paper. Likewise, to avoid further erosion to its CES baseline, the Commission should rule that the actions necessary to address the Climate Act implementation issues identified in the White Paper should be staged to ensure efficiency. Doing so will allow the Tier 2 issues to be addressed immediately.

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[34] Case 15-E-0302, *supra*, Renewable Energy Standard Program Impact Evaluation and Clean Energy Standard Triennial Review (June 1, 2020), at 61.

[35] *See* Case 15-E-0302, *supra*, Petition Regarding Clean Energy Standard – Competitive Tier 2 Program for Baseline Renewable Generation (Jan. 27, 2020), at 2.

[36] *See* Case 15-E-0302, *supra*, IPPNY's Comments on Competitive Tier 2 Program (May 5, 2020), at 2.

Additional positions not addressed by questions above

The White Paper proposes that fuel cells be ineligible under the CES except when they utilize a non-fossil fuel resource, such as hydrogen (or other fuel) that has been produced using a "renewable energy system" as a primary energy source.[37] The Commission should clarify that, consistent with the Climate Act, fuel cells are eligible under the CES unless they use a fossil fuel resource, and that "other fuel" includes biofuels. The definition of renewable energy systems under Section 66-p of the Public Service Law provides that it means:

> systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.

That biofuels are not specifically included in the list of technologies is irrelevant because, based on the plain words of the statutory language, any type of fuel cell meets the definition of renewable energy systems so long as it does not utilize a fossil fuel resource in the process of generating electricity. As made apparent in the definition of renewable energy resources in the New York State Energy Law, Section 1-102, biofuels and biomass are renewable fuels, not fossil fuels. Thus, the Commission should rule that fuel cells that use biofuels are eligible resources under the CES.

[37] White Paper at 10.

Respectfully submitted,

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