UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cricket Valley Energy Center LLC and Empire Generating Company, LLC	**Docket No. EL21-7-000**
v.	
New York Independent System Operator, Inc.	

COMMENTS OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

Pursuant to the Federal Energy Regulatory Commission's (the "Commission") October 23, 2020, Notice of Extension of Time, Independent Power Producers of New York, Inc. ("IPPNY") hereby comments on the complaint filed by Cricket Valley Energy Center LLC and Empire Generating Company, LLC (together, "Complainants") against the New York Independent System Operator, Inc. ("NYISO") in the above-captioned proceeding ("Complaint").[1]

IPPNY believes it is critical that all efforts are made to preserve the competitive wholesale markets in New York by harmonizing market mechanics with New York State public policy goals. While IPPNY has long supported the State's clean energy aspirations, the Complainants have correctly demonstrated that the manner in which the State has chosen to achieve these goals threatens to undermine the competitive wholesale electricity market which,

[1] IPPNY is a trade association representing companies involved in the development of electric generating facilities and the generation, sale, and marketing of electric power in the State of New York. IPPNY member companies produce a majority 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. IPPNY's fundamental interest remains rooted in the continued development and enhancement of reliable, efficient, and non-discriminatory integrated regional wholesale competitive electricity markets. This pleading represents the position of IPPNY as an organization, but not necessarily the views of any particular member with respect to any issue. IPPNY filed a doc-less motion to intervene in this docket on November 9, 2020.

as designed, has successfully maintained resource adequacy while achieving the additional public policy goal of limiting cost incurred by consumers.

New York's current clean energy policy is to select and pay emission credits through solicitation processes to certain types of resources that would not otherwise receive adequate revenues under the current wholesale electricity market construct, thereby subsidizing their participation in the market.[2] New York's decision to require retail consumers, through their retail electricity rates, to rely on such solicitations and pay a higher price for zero-carbon energy sources than is reflected in the competitive wholesale electricity market price suppresses wholesale market prices below efficient levels, resulting in additional costs to consumers without securing the benefit inherent in the wholesale market's ability, by design, to attract the most efficient and cost-effective resources.

IPPNY has repeatedly raised concern, in numerous Commission dockets, that energy and capacity market price suppression induced by out of market payments to State public policy resources undermines the functionality of the competitive wholesale markets, erodes just and reasonable price formation and is not sustainable over the long term.[3] Minimum offer price rules, such as the NYISO's buyer-side market power mitigation measures, have had some success in mitigating price suppression.[4] Applying such measures more globally to address the

[2] *See generally* Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Aug. 1, 2016), at 2.

[3] *See, e.g.*, Docket No. EL13-62, *Indep. Power Producers of New York, Inc. v. New York Indep. Sys. Operator, Inc.*, Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc. (May 10, 2013), at 1; Docket No. EL16-92, *New York State Public Service Commission et al. v. New York Indep. Sys. Operator Inc.*, Joint Protest of Independent Power Producers of New York, Inc. and Electric Power Supply Association (July 21, 2016), at 4; Docket No. ER16-1404, *New York Indep. Sys. Operator Inc.*, Joint Protest of Independent Power Producers of New York, Inc., and Electric Power Supply Association (May 31, 2016), at 4; Docket No. EL19-86, *New York State Public Service Commission et al. v. New York Indep. Sys. Operator, Inc.* Protest of Independent Power Producers of New York, Inc. (Aug. 19, 2019), at 5–6.

[4] *See* David B. Patton, Ph.D. et al., *2019 State of the Market Report for the New York ISO Markets*, New York Independent System Operator Inc. (May 2019), at 21 (stating that "[t]he BSM rules play a critical role in ensuring

growing subsidization of capacity resources in the State, however, will increase the tension between State policy goals and the competitive wholesale markets and may result in State actions adverse to the resource adequacy rules grounded in the NYISO tariff to the detriment of consumers. While IPPNY believes that resource adequacy is currently a wholesale market service over which the Commission has exclusive jurisdiction in New York, State action to take over for resource adequacy responsibility would likely cause years of litigation over the relative federal/State roles and authority over pricing constructs to ensure resource adequacy. This would create significant and, perhaps, paralyzing uncertainty in the market, and distract from the important work that is needed to evolve the NYISO's administered markets as the industry transitions in response to the mandates in recently enacted State legislation and increasingly more stringent State environmental regulations designed to advance the State's climate change goals.

IPPNY suggests that a carbon pricing program would be the most effective mechanism to achieve the State's clean energy goals and maintain the integrity, value, and resilience of the competitive market. A carbon pricing program would have the benefits of achieving the State's clean energy goals, maintaining the competitive market, minimizing the degree to which mitigation issues arise, and avoiding unnecessary litigation while maintaining just and reasonable capacity market prices to ensure reliability. As numerous studies have demonstrated, the solution to capacity market price suppression due to out of market payments to state public policy resources is to incorporate a carbon price into the wholesale market that will more effectively and efficiently provide revenues for the services provided by public policy resources

that out-of-market investment does not suppress capacity prices below competitive levels in the short-run, and are a critical tool in fostering confidence in the market and the competitiveness of future prices").

while maintaining just and reasonable capacity market prices to ensure reliability in the long term.[5] Doing so will greatly reduce the impact of buyer-side market power mitigation measures by increasing the market revenues available to State preferred carbon free resources. This path forward will result in the least regulatory uncertainty to public policy resource investors, as well as to those making investments in reliability resources, while fairly and more accurately valuing the emissions attributes of *all* resources and preserving the least cost pricing principles that have been the foundation of the competitive wholesale markets.

The Commission's recently Proposed Policy Statement clarifying its jurisdiction over organized wholesale electric market rules that incorporate a state-determined carbon price in those markets, and affirmative support for regional electric market operators to explore and consider the benefits of establishing such rules through Federal Power Act ("FPA") Section 205 filings, was a critical step to set the foundation to proceed in this vein.[6] It can no longer be doubted that the Commission will consider a carbon pricing proposal on its merits submitted under FPA Section 205. To minimize the potential for disruption to, and lessen public policy resource reliance on, payments under New York State programs that value the emissions attributes of wholesale market resources on a one-off basis, New York State should immediately support the incorporation of a carbon price into the wholesale markets administered by the NYISO.

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[5] *See* Analysis Group, Clean Energy in New York State: *The Role and Economic Impacts of a Carbon Price in NYISO's Wholesale Electricity Market*, Summary for Policy Makers and Final Report (October 23, 2019), at PP 41-43, available at https://www.nyiso.com/documents/20142/2244202/Analysis-Group-NYISO-Carbon-Pricing-Report.pdf/81ba0cb4-fb8e-ec86-9590-cd8894815231; also see, The Brattle Group, Pricing Carbon into NYISO's Wholesale Energy Market to Support New York's Decarbonization Goals (August 10, 2017), available at https://www.nyiso.com/documents/20142/2244202/2017-Brattle-NY-Carbon-Study.pdf/156a738d-e471-ccad-e146-07ac593ec0c3.

[6] Docket No. AD20-14-000, *Carbon Pricing in Organized Wholesale Electricity Markets*, 173 FERC ¶ 61,062 (2020).

Over the past three years, IPPNY has urged both the Commission and the New York State Public Service Commission ("NYPSC") to reconcile the tension between New York State clean energy goals and the goals of wholesale electricity markets by adopting a market-based approach that allows for the integration of State public policy goals that value all low-carbon emissions resources in a consistent and non-discriminatory manner.[7] As discussed at length at the Commission's recent technical conference on carbon pricing, wholesale energy prices in New York currently include some value for carbon emissions because New York is one of the states that participates in the Regional Greenhouse Gas Initiative ("RGGI") program.[8] RGGI requires fossil electric generating facilities larger than 25 MW to purchase RGGI allowances through an auction for each ton of carbon they emit.[9] These facilities include the costs of their RGGI allowances in their wholesale energy market offers because these costs are part of their operating costs. The number of allowances available to be purchased is determined and controlled by the RGGI states; the greater the supply, the lower the expected cost to purchase RGGI allowances. Due to the large quantity of allowances made available, the most recent RGGI allowance auction cleared at $6.82/ton (the second highest price since auctions began in 2008),[10] which is equivalent to approximately $3.41/MWh for the marginal resources in the NYISO's statewide energy market assuming they emit carbon at an average of 0.5tons/MWh.

[7] *See* Case 19-E-0530, *Proceeding on Motion of the Commission to Consider Resource Adequacy Matters*, Comments of Independent Power Producers of New York, Inc. (Aug. 21, 2020), at 10.

[8] Transcript of Carbon Pricing Technical Conference (October 30, 2020), https://elibrary.ferc.gov/eLibrary/filedownload?fileid=15652172.

[9] *Elements of RGGI*, RGGI, Inc., https://www.rggi.org/program-overview-and-design/elements.

[10] *See* RGGI Allowance Prices and Volumes (accessed October 22, 2020), https://www.rggi.org/Auctions/Auction-Results/Prices-Volumes.

The current value of carbon as a result of RGGI is drastically below the value needed to support renewable energy development.[11]

In 2016, the NYPSC adopted its Clean Energy Standard ("CES"), which put the State on a path of aggressively attracting and retaining zero-emissions energy resources through the awarding of contracts that value the environmental attributes of certain types of zero-emission resources.[12] The CES implicitly assigns a much higher value to carbon than the value RGGI has produced. Under the CES, load-serving entities ("LSEs") are required to acquire a certain quantity of renewable energy credits ("RECs") that increases annually through a formula. This process produced a price of RECs in 2020 of $22.09/MWh that LSEs can buy to meet their REC compliance obligation for 2020, which implies that a ton of carbon avoided by carbon-free resources selected through the CES is 547% more valuable than a ton of carbon avoided by carbon-free resources that exist today and are being priced and dispatched in the NYISO's markets.[13] In other words, while a carbon-free resource in the NYISO's market receives the value of the RGGI price ($3.41/MWh) through higher clearing prices only when a carbon-emitting resource is on the margin, a REC recipient receives an exponentially higher payment ($22.09/MWh), for the same attribute, regardless of whether a carbon-emitting resource is on the margin.

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[11] NYISO data for hourly marginal emissions rates averages 0.5 tons per MWh, but ranges from 0 to well over 1 ton per MWh depending on the hour and zone. *See* Recommended CO2 Value to Use in IPPTF Analysis, presented on April 23, 2018, https://www.nyiso.com/documents/20142/1393516/IPPTF%20CO2%20Value%204%2023%202018%20final%20%20pd.pdf/9b8ad8e6-8766-368e-43cd-171b55391a1d

[12] Cases 15-E-0302 et al., *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Aug. 1, 2016).

[13] *Clean Energy Standard: 2020 Compliance Year*, New York State Energy Research and Development Authority, https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/REC-and-ZEC-Purchasers/2020-Compliance-Year.

With the State incenting the retention of existing and attraction of new resources based on a value of carbon that is significantly higher than the value currently being reflected in the wholesale energy market clearing prices, and doing so at a scale that will affect a substantial portion of New York's energy supply, its efforts effectively replace competitive entry and subvert the signals provided by the Commission-approved wholesale market that are necessary to maintain needed existing and construction of new resources to meet reliability and system needs at just and reasonable prices.

There can be no doubt that a market-based approach that provides a single, nation-wide carbon price applied to all carbon emitting resources internalized in wholesale energy prices across the country would reduce carbon emissions and provide incentives for investors to make improvements that reduce their carbon emissions per MWh below their historical emissions. Such an approach may not be practical at this time, however, given the aggressive timelines set forth in the CLCPA to combat climate change. While a nation-wide construct remains pending, IPPNY supports incorporation into the NYISO's market of a single, New York State determined carbon price to support the State's public policy of valuing carbon emissions in a manner that is efficient, cost effective, and non-discriminatory, and would harmonize the NYISO's market construct with the State's goals. The NYISO energy market already incorporates market participants' regulatory compliance costs for Nitrogen Oxides, Sulfur Dioxide, and RGGI allowances into their marginal cost of energy production, providing some relative benefit to low or zero-emissions energy sources. Building on that general template, as discussed at the Commission's carbon pricing technical conference, the NYISO has developed a comprehensive market design and associated tariff amendments that would internalize the value

of carbon emission reductions in wholesale energy prices.[14] The NYISO's carbon-adder approach will produce price signals that are reflective of resources' relative emissions profiles and creates an efficient means for producers and consumers to factor environmental impacts into economic decision-making in ways that spur innovation and reward the most cost effective means of decarbonizing the grid while maintaining electric system reliability and working in harmony with the least-cost dispatch principles that are critical to the operation of the wholesale competitive electricity markets.

If the full cost of carbon, as determined by the State, were to be incorporated into NYISO commitment and dispatch signals, it would provide a more effective representation of the carbon impact of different resources based upon the actual benefits of their location and generation profile. There would also be savings to consumers state-wide from a reduction in the expected costs of Zero Emissions Credit ("ZEC") payments to the State's nuclear energy facilities, which could be phased-out while allowing nuclear units to remain economic because incorporating the full cost of carbon into the NYISO's dispatch logic, if done correctly, should reduce the ZEC price over time to zero under the NYPSC's tranche-based formula for calculating ZEC payments.[15]

The inclusion of an efficiently set value of carbon applied on an equal basis to all resources would send signals regarding the benefits of replacing less efficient carbon-emitting resources with more efficient resources, thereby contributing to the State's clean energy goals. This would reduce the net cost of new entry for efficient units, such as combined cycle facilities, by increasing the energy market revenue available to such units, and would likely

[14] Docket No. AD20-14-000, *supra*, Opening Remarks of Richard J. Dewey on Behalf of the New York Independent System Operator, Inc. (Oct. 5, 2020), at 4.

[15] *See generally* Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (Aug. 1, 2016), at 19–20.

hasten the retirement of older and higher carbon-emitting resources to be replaced with newer, state-of-the-art, efficient resources.

Thus, carbon pricing is, by far, the most expedient, efficient, and non-discriminatory path to alleviating the tension between the competitive wholesale market and State public policy goals. For this reason, IPPNY continues to support the implementation of a carbon pricing program in the NYISO markets as soon as possible.

Respectfully submitted,

David B. Johnson
David B. Johnson
Read and Laniado, LLP
Counsel for Independent Power
Producers of New York, Inc.
25 Eagle Street
Albany, New York 12207
Telephone: 518-465-9313
DBJ@readlaniado.com

Dated: November 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the foregoing document by electronic mail or first-class mail upon each person designated on the official service list compiled by the Secretary to the Commission in this proceeding.

David B. Johnson
David B. Johnson

Dated: November 18, 2020