Summary and Justification

Joint Group Support for Assembly Budget Resolution

Joint Group Amendment to Governor’s Budget Proposal
(Parts XX and YY of S.4008-A / A.3008-A)

NYPA To Build, Own, And Operate New Renewable and Energy Storage Projects

Our coalition of groups (ACE NY, Advanced Energy United, IPPNY, NY-BEST, SEIA, and New York State Laborers' Organizing Fund) support the provision of the Assembly’s Budget Resolution, which EXCLUDES the Governor’s proposal (Parts XX and YY of S.4008-A / A.3008-A) to have the New York Power Authority (NYPA) build, own, and operate new renewable and energy storage projects.

Our groups agree with the Assembly that this topic does not need to be addressed during the State’s Budget process, as it does not have positive fiscal implications; furthermore, because NYPA does not pay taxes on its properties, it would have a negative impact on future State and local revenues. Numerous policy reasons also exist for why NYPA should not re-enter the renewable and energy storage development business, as discussed in more detail below.

The Assembly’s Resolution also states that the Assembly is committed to developing a plan to require that any of NYPA’s projects in this realm would fill gaps identified by an assessment of progress toward meeting the energy goals of the Climate Leadership and Community Protection Act (CLCPA), while including provisions of benefit to union labor and to low-income consumers.

If the Legislature and Governor decide that an agreement on this topic is needed before the end of this Legislative Session, our coalition of groups has provided an amendment to your three offices to accomplish the Assembly’s intention, in a way that protects ratepayers and does not hinder successful private sector investment by our Member companies.

Our amendments are intended to ensure that New York State continues to enable a robust private sector market and private investments to meet the State’s climate and clean energy goals. To that end, our amendments appropriately limit NYPA’s authority to build, own and operate renewable generation and energy storage.

A summary of, and justification for, our amendment is provided below.

Coalition Group Amendment Addresses Assembly’s Intention for Assessment of CLCPA Targets Before NYPA Can Act

One provision of our amendment is central to accomplishing the Assembly’s intention, as noted above, to require an assessment before NYPA can act, and highlights of this provision are provided below.

- NYPA should confer at least bi-annually, with an opportunity for public comment, with the New York State Energy Research and Development Authority (NYSERDA), the Office of Renewable Energy Siting (ORES), the Department of Public Service, and the New York Independent System Operator (NYISO) to decide whether and how NYPA should use its powers to build, own, and operate new renewable and energy storage projects.
The Governor’s language includes a provision for this conferring, and our amendment adds the NYISO to this process, as the NYISO is conducting studies about how the CLCPA’s target can be met and how reliability can be maintained; the NYISO also knows the status of its Interconnection Queue (which is one of the criteria the amendment adds, as discussed below, for deciding the conferring’s outcome).

- A provision for public comment is added to the conferring process, in order for the decision-making process to be transparent and inclusive.
- The Governor’s language states that the conferring would be periodic, and our amendment would have it occur biannually, in order to allow time for the process to be completed in an open and transparent way, although NYPA testified during the Joint Budget Hearing that it would agree to annual conferring.
- The outcome of the conferring should be a Public Service Commission (PSC) finding about whether the CLCPA’s renewable and energy storage targets will be met.
  - The CLCPA already requires the PSC to determine, pursuant to Section 66-p of the Public Service Law, if the targets are being met; the PSC’s process for making findings is a public participation and comment process through its proceedings, most likely through its cases on the Clean Energy Standard (CES) (15-E-0302) or the CLCPA (22-M-0149).
  - If the PSC makes this finding, then NYPA can act with its non-utility partners, if the following criteria are met:
    - There are not enough projects in the NYISO’s Interconnection Queue to make the needed progress on meeting the targets; and
    - Both NYPA’s and NYSERDA’s Requests for Proposals (RFPs) are not working to meet the targets.

Additional Provisions of Coalition Amendment to Improve Governor’s Proposal

Additionally, our amendment also improves the Governor’s proposal through the inclusion of the following important provisions:

- NYPA first is to continue to do competitive procurement for its energy supplies, as required by its current law.
- NYPA should not act on its own and only should act with non-utility partners, as is consistent with State policy being implemented under the CES that focuses on NYSERDA’s RFPs that are securing successful independent renewable and energy storage investment to meet the CLCPA’s targets.
- The Governor’s proposal allows NYPA to acquire property, and our amendment ensures that acquisition must be only from willing sellers and must not involve condemnation.
- The Governor’s proposal allows NYPA to form subsidiaries to do its renewable and energy storage work; we support a subsidiary approach, as long as they are financially separate from NYPA.
  - NYPA’s subsidiaries must not have competitive advantages (access to bonding with guaranteed cost recovery from ratepayers pursuant to NYPA’s bond covenants) over the independent sector companies that are doing the same work, in order to there to be fair competition consistent with existing State policy.
    - To ensure this fair competition, our amendment requires that financial separation and also avoids the resulting increased costs for NYPA’s ratepayers.
  - Our amendment uses the language from the Public Service Law on the financial separation of utility subsidiaries (like Con Edison Solutions) from their utility parents.
During the Joint Budget Hearing, NYPA testified that its intention, for coming back into the renewables and energy storage business, is to obtain the Federal Inflation Reduction Act (IRA) benefits, which our Member companies also can access.

- Our amendment specifies that the only financial nexus that NYPA’s subsidiaries can have to NYPA is to provide those IRA benefits to its projects in partnership with the private non-utility sector.
- Our amendment specifies that no preference can be given to NYPA over a private sector project developer, given that NYPA owns and operates both generation and transmission (in order to avoid market power).
- The amendment makes clear that NYPA is subject to the ORES law and all other provisions with which private sector developers must comply and that the projects, in which NYPA would be involved, are those that receive permits from ORES.
  - This conformance with NYPA’s law was done each time the State’s Siting Law was extended and when it was made permanent pursuant to Article 10 of the Public Service Law; however, NYPA’s law on this point was not updated when the ORES law was enacted.
    - Even though the ORES law is within the Executive Law and not the Public Service Law or the Environmental Conservation Law, NYPA’s being subject to the ORES law (which has siting and environmental provisions) and related requirements must be completely clear, in order to avoid any misunderstandings or misperceptions about NYPA not having a competitive advantage on this point or even worse – avoiding environmental review to the detriment of host localities to which NYPA does not pay taxes (given that private sector developers pay taxes).
- Our amendment also continues the State’s prohibition on utilities constructing and owning new generation.
  - If NYPA is allowed to re-enter the new generation and storage business, the utilities will want the same and already have been trying to win this position through actions at the PSC and via other bills.
    - The PSC continuously and rightfully has maintained its wise decision on the prohibition for utilities to be in this business and to protect ratepayers.
    - Neither NYPA’s nor the utilities’ ratepayers should be paying for what the independent private sector already is doing well, as NYSERDA testified repeatedly during public hearings.
- Our amendment would add a five-year sunset to the Governor’s proposal, after which the Legislature can decide again if NYPA still needs to be involved in the new renewables and energy storage business.
  - This five-year sunset is consistent with that under the 2019 change to NYPA’s law.
  - The sunset in 2028 allows for several cycles of conferring as to the need for NYPA’s involvement, and its joint projects, if any, would be in process to meet the CLCPA’s targets.
  - If more involvement by NYPA is needed after 2028, the Legislature can decide then if that involvement continues to warrant the cost to NYPA’s ratepayers.
- Our amendment also extends the 2019 change to NYPA’s law, pursuant to Part YY of S.4008-A / A.3008-A, to be through 2028 (instead of 2044), in order to similarly protect NYPA’s ratepayers.

Reasons Why NYPA Should Not Re-Enter New Renewable and Energy Storage Business

Sound reasoning remains as to why the NYPA should not re-enter the renewable energy and energy storage. At the Assembly’s July 28, 2022 hearing on the Role of State Authorities in Renewable Energy Development, NYSERDA’s President and CEO Doreen Harris testified that projects already in existence or
under active development will result in 66 percent of statewide electricity coming from renewable resources by 2030.

Additionally, NYPA should not develop and own new renewable and energy storage projects because doing so:

- is unnecessary and would undermine the current, successful model, which relies on renewable energy and energy storage companies - big and small - to develop these projects to meet the CLCPA’s targets and to grow the State’s clean energy economy.
  - Over 50,000 MW of wind, solar, and battery storage projects are in the NYISO’s Interconnection Queue.
  - More than 120 renewable energy projects (some of which include energy storage), totaling over 12,000 MW, have received awards under NYSERDA’s RFPs.
  - Also, there are 6,428 MW of renewable capacity currently installed, according to NYISO data.
  - Notably, the Climate Action Council’s adopted Scoping Plan relies on private sector investment – not NYPA’s – to reach the CLCPA’s targets.
  - New York nearly achieved in 2022 the previously established goal of 6 gigawatts (GW) of solar power by 2025, and Governor Kathy Hochul has approved a new goal of at least 10 GW of distributed solar by 2030.
  - Additionally, the Governor has directed that the CLCPA’s original goal of 3 GW of energy storage by 2030 be increased to at least 6 GW by 2030.
- does not help the State meet its energy and environmental goals any faster than private developers can because NYPA cannot complete the siting process any quicker.
  - NYPA has not built a new power plant in over 15 years and, instead, has successfully obtained its new power supplies through competitive procurement and from the competitive wholesale electricity market.
  - The private sector has been successfully developing and operating large-scale renewable electric generation facilities for two decades.
- re-exposes ratepayers to increased cost burdens, cost overruns, and NYPA’s bad decisions.
  - NYPA’s customers would be responsible for paying all of the costs of NYPA’s projects.
    - NYPA’s has more than 1,000 customers, from local and state governments (such as the New York City Housing Authority, New York City government, the Metropolitan Transportation Authority, Westchester County government and numerous municipalities and school districts), to large and small businesses and non-profit organizations (such as colleges, universities, and hospitals) that currently rely on NYPA’s favorable energy rates.
  - New York’s ratepayers should not have to bear the risk of NYPA’s past, present, or future failures.
    - NYPA has evidence of failed power projects, including its Hudson Transmission Partners project that now represents an approximate liability of $645 million for NYPA.
    - Further, according to New York State Comptroller Thomas P. DiNapoli’s recent audit of electric vehicle charging infrastructure deployment, “…despite millions invested, NYPA’s Evolve NY charger deployment threatens the State’s ability to meet the Climate Act’s 2030 deadline.”
- eliminates what otherwise would be local taxes paid by an independent private sector facility, given that NYPA does not pay taxes on its facilities; private sector energy producers overall currently pay more than $1.7 billion in property taxes annually.
• diverts NYPA’s resources away from its statutory role to build new transmission lines to provide the renewable energy from where it is generated to the locations where energy consumers can use it.

• is inconsistent with more than 20 years of policy, under which New York and many other states redesigned a failing electric utility industry model and transitioned away from one where utilities and state authorities developed new electric generation projects to a system where that function is handled by private independent power producers, including our Member companies - who have met this challenge and will continue to do so as we work towards reaching the CLCPA’s 2030 and 2040 targets.

• is inconsistent with provisions supported by the Legislature in the 2019 Enacted Budget (which was the same year that the CLCPA was enacted), which expressly provided that NYPA would not build and own new generation; NYPA’s statute, even before the 2019 Enacted Budget, states that NYPA is to do competitive procurement for new energy supplies.

We look forward to continuing to work with you to meet the CLCPA’s targets. Please let us know if you have any questions or need additional information.

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