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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Dated: February 7, 2022

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Pursuant to the New York State Public Service Commission ("Commission") Secretary's notice soliciting comments issued on December 2, 2021, in the above-captioned case,[1] Independent Power Producers of New York, Inc. ("IPPNY") hereby comments on the petition filed with the Commission on November 30, 2021, by Department of Public Service Staff ("DPS Staff") and the New York State Energy Research and Development Authority ("NYSERDA").[2] The Petition requested the Commission's approval of two contracts for the purchase and sale of renewable energy credits ("RECs") under Tier 4 of the Clean Energy Standard ("CES") by NYSERDA from Clean Path New York LLC ("CPNY") and H.Q. Energy Services (U.S.) Inc. ("HQUS").

IPPNY is a not-for-profit trade association representing companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities 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,

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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 Soliciting Comments (Dec. 2, 2021) ("December Notice").

[2] Case 15-E-0302, *supra*, Petition Regarding Agreements for Procurement of Tier 4 Renewable Energy Certificates (Nov. 30, 2021) (the "Petition").

waste-to-energy, and nuclear.[3] IPPNY's fundamental interest is in the continued development and enhancement of reliable and efficient integrated regional wholesale competitive electricity markets. With respect to the Petition, IPPNY's interest lies mainly in ensuring that the 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.

As discussed below, if the Commission approves NYSERDA's proposed contract with CPNY, which is the lower cost of the two projects, it should reject NYSERDA's proposed contract with HQUS because it reduces net societal benefits and is not in the best interests of ratepayers. In NYSERDA's evaluation of the bids it received in response to its solicitation from seven proposers, which submitted 33 alternative bids, NYSERDA determined that CPNY's project was the highest ranked project, optimizes the deliverability of renewable resources from the upstate region of the State to the downstate region, and has greater net benefits than HQUS's Champlain Hudson Power Express ("CHPE") project. While NYSERDA determined that the CHPE project was the second highest ranked project, NYSERDA's own cost/benefit analysis demonstrated that *New York State would realize lower net societal benefits* if it contracted with both CPNY and HQUS than if it contracted with CPNY alone. As discussed in detail below, such a combination of proposals is not sufficiently compelling to warrant such a major commitment from the State.

Not only does the CHPE project detract from the net benefits produced by the CPNY project alone, but its greenhouse gas emissions reductions benefits are not in accordance with the Commission's requirements and dubious. Under its proposed contract, HQUS is permitted to

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

simply redirect hydroelectric power it historically provided to New York to Zone J. The contract would allow HQUS to meet the Commission's requirement in its order adopting Tier 4 that such power be additional to HQUS's historical baseline production of renewable energy by developing renewable generation it would have likely developed or contracted for anyway to meet its own load in Quebec and other load commitments.[4] The proposed contract also contains terms that NYSERDA and DPS Staff admit would allow HQUS to receive compensation for Tier 4 RECs for renewable generation that does not satisfy the Additionality Requirement. The CHPE project, which is essentially a lead line from Canada, also completely bypasses renewable generation in New York, thereby shifting New York ratepayer dollars to Canada. It also erects a barrier to access to Zone J for existing and future New York clean energy resources. Moreover, the proposed contract raises serious questions regarding the reliability benefits of the CHPE project because it is not required to deliver installed capacity to Zone J during the winter capability period. Therefore, the HQUS contract is not in compliance with the Commission's Order and is not in the public interest and should be rejected. If the Commission does not reject the HQUS contract outright, it should condition its approval on NYSERDA and HQUS modifying the contract to ensure that the energy HQUS delivers to Zone J under the contract satisfies the Additionality Requirement and require that HQUS supplies installed capacity to Zone J during the winter capability period.

I. BACKGROUND

In its Order, the Commission adopted several modifications to its existing CES to help achieve the State's climate and clean energy objectives under the Climate Leadership and

[4] Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard (Oct. 15, 2020) ("Order"). Specifically, the Commission ruled that existing, but not new, hydropower impoundments are eligible for Tier 4 so long as the associated energy "is shown to be additional to the supplier's baseline production of renewable energy" (the "Additionality Requirement"). Order at 18.

Community Protection Act ("CLCPA").[5] One of the most important modifications to the CES was the Commission's adoption of a new Tier 4 of the CES, independent of both Tier 1 and the Offshore Wind Standard, to increase the penetration of renewable energy in Zone J and reduce the reliance on fossil fuel-fired generation in that zone.[6] The Commission ruled that all "renewable energy systems," as defined in PSL § 66-p(1)(b), are eligible for Tier 4 with some exceptions.[7] Specifically, the Commission ruled that existing, but not new, hydropower impoundments are eligible for Tier 4 *so long as the associated energy meets the Additionality Requirement*.[8] Non-hydropower renewables must achieve commercial operation after the date of the Order to be eligible for Tier 4.[9]

The Commission adopted two additionality criteria applicable to hydropower resources, the Supplier Energy Baseline and the Supplier GHG Baseline. The purpose of the Supplier Energy Baseline "is to ensure that Tier 4 deliveries are not met through re-directing the use of existing resources in a way that provides no net benefit to the State."[10] NYSERDA would only compensate Tier 4 RECs "if and to the extent renewable generation is delivered to the NYCA that exceeds the three-year historical baseline of renewable energy that the supplier and its affiliates have delivered to the NYCA."[11] The Commission directed NYSERDA to solicit Tier 4 bids both with and without the Supplier Energy Baseline because the Commission was

[5] The CLCPA directs the Commission to establish a program to ensure (1) enough renewable energy resources to serve at least 70% of load in 2030, and (2) that there are zero emissions in 2040 associated with electrical demand. *See*, Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney) (codified, in part, in Public Service Law ("PSL") § 66-p). The CLCPA became effective on January 1, 2020.

[6] Order at 79–80.

[7] Order at 85.

[8] Order at 18 (emphasis added).

[9] *Id*. at 85.

[10] *Id*. at 87.

[11] *Id.*

concerned, if it was rigidly applied, it could increase costs of the Tier 4 program and encourage uneconomic dispatch of resources.[12] The Commission ruled that NYSERDA should evaluate the separate bids "based on their overall value to the State."[13]

The purpose of the Supplier GHG Baseline "is to ensure that the energy associated with the Tier 4 RECs is not backfilled by fossil fuel-fired resources supplied to the historic recipient of such energy."[14] NYSEDA would only compensate Tier 4 RECs to the extent that they are associated with energy that is incremental to the supplier's total historical generation of renewable energy. Specifically, the Commission ruled in its Order:

> the baseline should be calculated as an *historical average of hydropower generated by the supplier*. Renewable generation used to satisfy the baseline should be calculated as the sum of (1) hydropower generated by the supplier, less any generation from new impoundments not already under construction as of the date of this Order, and (2) non-hydropower generation that (a) meets the definition of "renewable energy systems" under the [Climate Leadership and Community Protection Act], (b) is not compensated elsewhere under the CES, and (c) meets the Tier 4 vintage requirement for non-hydropower resources.[15]

To achieve the Commission's objective of reducing the reliance on fossil fuel-fired generation in Zone J, the Commission required that Tier 4 resources must either be located in Zone J or delivered to Zone J over a new transmission interconnection built after the date of the Order.[16]

The Commission ordered NYSERDA to issue a solicitation within 60 days of its Order for up to a non-binding limit of 1,500 MWs of Tier 4 resources, which may be exceeded "only upon receipt of proposals that are *sufficiently compelling* to warrant such a major commitment

[12] *Id.* at 89.

[13] *Id.*

[14] *Id*. at 87.

[15] *Id*. at 90 (emphasis added).

[16] *Id*. at 93.

from the State."[17] The Commission directed NYSERDA to apply the same evaluation and weighting criteria used in Tier 1 solicitations if it issues a solicitation with a single due date and it receives multiple bids, which requires a rank-ordering of bids based on: 70% price; 20% project viability, operational flexibility, and peak coincidence; and 10% economic benefits.[18]

The Commission ruled that, unlike Tier 1 solicitations in which broad competition is assured and no further evaluation is required after Tier 1 bids are ranked, for Tier 4 bids, NYSERDA and Staff must also evaluate whether each agreement will advance the public interest of the State.[19] The Commission ruled that the criteria for making the public interest determination

> should include, but need not be limited to: (1) whether the agreement is a cost-effective means of progressing toward the CLCPA's 2030 and 2040 Targets in light of the unique challenges of reducing fossil fuel use in Zone J; (2) the extent to which the selected project or projects will enable reduced reliance on fossil-fuel fired generation located in Zone J; (3) the degree to which the selected project or projects complement the foreseeable deployment of offshore wind within Zone J; (4) impacts to disadvantaged communities; (5) project viability; and (6) economic benefits to the State.[20]

NYSERDA received proposals in response to its Tier 4 solicitation from seven proposers, which submitted 33 alternative bids. After performing its bid evaluation and contracting process, NYSERDA recommends that the Commission approve two 25-year contracts for the purchase of Tier 4 RECs associated with the generation and delivery of renewable power over the CPNY project, which will deliver renewable power from Zone E to Zone J over a proposed 1,300 MW,

[17] *Id.* at 94–95 (emphasis added).

[18] *Id.* at 97.

[19] *Id.*

[20] *Id.* at 97–98.

174-mile HVDC transmission line, and the HQUS project, which will deliver renewable power from Québec to Zone J over the proposed 1,250 MW, 339-mile CHPE HVDC transmission line.

In its Order, the Commission required NYSERDA and DPS Staff to file any agreement for the procurement of Tier 4 RECs for its approval "to ensure that Tier 4 REC prices are reasonable in relation to the value of the environmental attributes and other benefits provided, including system and public health benefits."[21] The Commission ruled that it will apply the same public interest criteria that it directed NYSERDA to apply to its evaluation of bids.[22]

II. THE COMMISSION SHOULD REJECT NYSERDA'S PROPOSED CONTRACT WITH HQUS BECAUSE IT REDUCES NET BENEFITS AND IT DOES NOT MEET THE REQUIRMENTS OF THE ORDER OR THE PUBLIC INTEREST.

In its evaluation of the 33 bids received in response to its Tier 4 solicitation, NYSERDA determined that CPNY's project was the highest ranked project. While NYSERDA determined that the HQUS project was the second highest ranked project, NYSERDA's own benefit cost analysis demonstrated that the CPNY project would produce greater net benefits than the HQUS project and that the State would realize lower net benefits if NYSERDA contracted with both CPNY and HQUS than if it contracted with CPNY alone.[23] Copied below are NYSERDA's benefit cost analysis results from its cost analysis which is attached as Appendix C to the Petition.

[21] *Id*. at 81–82.

[22] *Id*. at 97.

[23] *See* Case 15-E-0302, *supra*, Tier 4 Petition Appendix C (Cost Analysis) (Nov. 30, 2021) ("Appendix C. Cost Analysis"), at 19.

Table 2: Benefit Cost Analysis Results – CPNY

Real 2021 $B NPV	**Resource Investment**	**System Resource Value**	**Carbon Value**	**Air Quality Value**	**Net Benefit**
High Capacity Value Scenario	$10.2	$9.9	$5.1	$2.8	**$7.5**
Low Capacity Value Scenario	$10.2	$9.3	$5.1	$2.8	**$7.0**
Low Carbon Value Scenario	$10.2	$9.9	$2.3	$2.8	**$4.7**
Low Air Quality Value Scenario	$10.2	$9.9	$5.1	$1.2	**$6.0**

Table 3: Benefit Cost Analysis Results – CHPE

Real 2021 $B NPV	**Resource Investment**	**System Resource Value**	**Carbon Value**	**Air Quality Value**	**Net Benefit**
High Capacity Value Scenario	$13.5	$13.9	$3.7	$1.6	**$5.7**
Low Carbon Value Scenario	$13.5	$13.9	$1.7	$1.6	**$3.6**
Low Air Quality Value Scenario	$13.5	$13.9	$3.7	$0.7	**$4.8**

Table 4: Benefit Cost Analysis Results – CPNY and CHPE Combined

Real 2021 $B NPV	**Resource Investment**	**System Resource Value**	**Carbon Value**	**Air Quality Value**	**Net Benefit**
High Capacity Value Scenario	$23.7	$19.0	$8.1	$4.0	**$7.4**
Low Capacity Value Scenario	$23.7	$18.6	$8.1	$4.0	**$6.9**
Low Carbon Value Scenario	$23.7	$19.0	$3.6	$4.0	**$2.9**
Low Air Quality Value Scenario	$23.7	$19.0	$8.1	$1.8	**$5.2**

The tables show the costs and benefits of each project alone and combined in terms of resource investment, system resource value, carbon value and air quality value across various scenarios. The average net benefits produced by the CPNY project across the various scenarios, shown in Table 2, are 34% greater than the net benefits produced by the CHPE project, shown in Table 3. Significantly, the net benefits for CPNY and CHPE combined, shown in Table 4, are lower than the net benefits for CPNY alone. NYSERDA's analysis demonstrated that the CHPE project detracts from the net benefits produced by the CPNY project. Simply put, New York State would be better off with the CPNY project alone than with both the CPNY and CHPE projects.

The Petition stated that the lower value of the combined case are "[d]ue to overlaps in the delivered benefits."[24] NYSERDA and Staff attempted to excuse the lower net benefits by stating that the analysis "does not take into account the wider system benefits from the combination of the projects in terms of meeting system needs related to New York's 2040 zero emission goal under the Climate Act."[25] NYSERDA's and Staff's justification is unavailing because they fail to consider that the 2040 zero emissions goal can be met in a variety of ways that may have greater net benefits than the net benefits of the billions of dollars that would be spent on the CPNY and CHPE projects combined.

In its Order, the Commission directed NYSERDA to hold a Tier 4 solicitation targeted at procuring 1,500 MW of generation.[26] The CPNY project alone comes close to meeting that target. Nor has NYSERDA attempted to argue that both contracts must be executed. They are not linked (indeed, adding the CHPE project to the mix denigrates the value of the CPNY project as demonstrated in NYSERDA's own petition) and the Commission can certainly elect to accept one contract at this time. While NYSERDA seeks to support Commission approval of both contracts on the grounds that NYSERDA did not perceive the need for any further Tier 4 solicitations,[27] facts and circumstances that have developed even since NYSERDA filed these contracts with the Commission at the end of November demonstrate why "one and done" likely will lock the State into much higher cost and lower value outcome.

For example, the Biden Administration confirmed that the Bureau of Ocean Energy Management will hold an auction for new leasehold interests in the New York Bight covering

[24] Appendix C. Cost Analysis at 20.

[25] *Id.*

[26] Order at 95.

[27] *See* Petition at 17.

more than 480,000 acres across six lease areas, the most areas ever offered in a single auction.[28] Likewise, in her State of the State Address, Governor Kathy Hochul reaffirmed New York's commitment to lead the nation in offshore wind development and confirmed NYSERDA would hold its next offshore solicitation in 2022, which is projected to be issued in the March-April time frame. In support of that focus, the Commission issued its order in the Power Grid Proceeding on January 20, 2022 with directives to address the transmission and interconnection pieces to allow 6,000 MW of offshore wind to be connected to Zone J.[29] It would be premature at best, and may well prove foolhardy at worse, for the State to lock itself into contracts for nearly double the MW level identified in the Order given the offshore wind opportunities that doing so could well meet the State's objectives.

It any event, it is entirely possible that the 2040 zero emissions goal can be met at lower cost and with greater net benefits with the CPNY project combined with an in-State Tier 4 proposal, offshore wind, or some other zero emitting technology sited in New York's statewide market or Zone J that does not require a lengthy and expensive, new transmission line to Canada rather than with the CPNY project combined with the CHPE project. Moreover, the combination of offshore wind, the CPNY project and transfers of renewable energy from upstate on the existing and planned transmission system might alone provide sufficient ability to deliver renewable energy to Zone J such that the additional CHPE investment is not necessary or at best, premature.

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[28] *See* Bureau of Ocean Energy Management, New York Activities, https://www.boem.gov/renewable-energy/state-activities/new-york-activities.

[29] *See* Case 20-E-0197, *et al., Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, Order on Power Grid Study Recommendations (Jan. 20, 2022) at 40.

It is quite possible that in many hours the combination of offshore wind and the CPNY and CHPE projects merely results in backing down other renewable energy deliveries from upstate and potentially results in exporting power out of southeast New York into the Rest of State region, all while paying a premium for the ability to export this power. Unfortunately, NYSERDA's benefit cost analysis did not analyze other potential zero emitting options because the Tier 4 solicitation explicitly excluded participation by offshore wind and was limited to renewable energy systems that deliver their energy to Zone J over new transmission.

Notwithstanding NYSERDA's process, the Commission must evaluate how Tier 4 will work with offshore wind and other transmission infrastructure improvements that are underway. Before saddling New York electricity consumers with the staggering costs of two transmission projects, valued at $23.7 billion for the CPNY and CHPE projects, when NYSERDA's own analysis shows only the CPNY project, in terms of net benefits, should go forward, the Commission should require NYSERDA to complete its offshore wind procurement and hold a new solicitation that would allow all potential zero emitting technologies to compete to meet the State's 2040 zero emissions goals and ensure net benefits are additive as opposed to cannibalized. Accordingly, the Commission should not approve the award of a contract for the CHPE project because the net benefits are less with the project and it isn't even known if it is necessary until the offshore wind procurement and other potential projects are known.

Not only does the CHPE project detract from the net benefits produced by the CPNY project alone, it also has other flaws that weigh against the Commission approving it. First, the CHPE project, essentially a radial line between Canadian generation and Zone J, completely bypasses renewable generation in New York, providing much of the economic benefits associated with the NYSERDA contract to Canada. NYSERDA and DPS Staff emphasized that

a key attribute of CPNY's transmission project is that it will relieve congestion on the Central-East interface, which "can avoid exacerbating congestion and curtailments of CPNY's and other future Tier 1 Upstate wind and solar resources."[30] The CPNY project, thus, directly helps alleviate the concerns identified by the New York Independent System Operator, Inc.'s ("NYISO") "Tale of Two Grids" analysis, which DPS Staff referenced in its White Paper recommending, among other things, a new Tier 4 to the CES.[31] As the Commission noted in its Order, the NYISO's analysis showed that upstate New York is supplied by 88% zero-emission resources but is only one third of the statewide load while the downstate region is two thirds of statewide load but is supplied by 69% fossil fuel-fired generation.[32]

Notably, the Petition stated that, after NYSERDA determined its preliminary ranking of projects, it considered other "program policy factors" that contribute to the achievement of the CES mandate, the reduction of greenhouse gas emissions, and the goals of the Order. These factors included:

- "The extent to which a Project's deliveries are not met through the re-directing of existing resources in a way that provides no net benefit to the State; . . . and
- The extent to which the proposed Project promotes delivery of renewable energy from upstate regions of the State into Zone J, eases the curtailment of upstate renewable resources, and optimizes deliverability of renewable resources throughout the entirety of the State."[33]

[30] Petition at 33.

[31] *See* 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), at 45.

[32] Order at 77-78 (citing NYISO, Power Trends 2020, at 9).

[33] Petition at 14.

While NYSERDA and DPS Staff highlighted the benefit the CPNY project will provide by delivering upstate renewable power to Zone J, NYSERDA decided not to apply the program policy factors in its bid evaluation process and confirmed its preliminary ranking as the final ranking.[34]

The Petition does not state why NYSERDA and DPS Staff chose not to apply the program policy factors, but it may be because the CHPE project scored poorly on these factors.[35] In contrast to the CPNY project, the CHPE project would not promote the delivery of renewable energy from upstate regions of the State into Zone J. In fact, the CHPE project would completely bypass upstate renewable generation.

NYSERDA also decided to accept HQUS's bid without the Suppler Energy Baseline, which would have required that HQUS's deliveries to Zone J be incremental to its historical deliveries from its existing renewable generation to New York to qualify for Tier 4 REC compensation.[36] Thus, under its proposed contract, HQUS is permitted to simply redirect hydroelectric power from its existing generation that it historically provided to New York to Zone J. Although the Commission directed NYSERDA to solicit bids both with and without the Supplier Energy Baseline and evaluate them based on their overall value to the State, the Petition did not provide any analysis supporting NYSERDA's decision to accept HQUS's bid without the Supplier Energy Baseline. Although the Commission expressed concern that rigid application of

[34] *Id*.

[35] There is also no discussion in the Petition regarding whether NYSERDA and Staff evaluated whether other bids met the program policy factors and whether these bids could have provided improved net benefits from a policy perspective. By awarding just the CPNY contract at this time, NYSERDA and the Commission will be able to evaluate the achievement of policy factors as part of upcoming solicitations thereby providing an opportunity to ensure that greater net benefits are achieved and policy factors are addressed. In other words, NYSERDA will have better opportunities to evaluate policy factors of a CPNY project combined with a more diverse set of resources, e.g., offshore wind, new Tier 1 resources and other clean energy resources proposed to meet the CLCPA goals.

[36] *See* Petition at 39.

Supplier Energy Baseline could increase the cost of the Tier 4 program and encourage uneconomic dispatch of resources in its Order, the Petition is silent as to why NYSERDA eliminated the Supplier Energy Baseline for the HQUS contract and provides not rationale or evidence to support such a recommendation. It is unknown whether NYSERDA's benefit cost analysis made any assumptions regarding the extent to which HQUS may redirect hydroelectric power historically delivered to the State to Zone J. Without this information, the Commission cannot determine whether the HQUS contract is in the public interest and it is difficult to tell how it could be in the public interest without any New York renewable resources being delivered to Zone J.

Second, while HQUS is still required to comply with the Supplier GHG Baseline, its proposed contract includes a banking and borrowing mechanism and other terms that are inconsistent with, and undermine the purpose of, the Supplier GHG Baseline. Importantly, the Commission ruled that "[t]he Supplier GHG Baseline is central to the integrity of the Tier 4 concept and cannot be compromised."[37] HQUS's proposed contract would compromise the integrity of the Tier 4 program and make its greenhouse gas emissions reductions benefits dubious. The banking and borrowing mechanism in the proposed HQUS contract permits HQUS to average production over the entire contract delivery term rather than annually as required by the Order. The Petition stated:

> To the extent that the HQUS resources annually generate energy in excess of the Supplier GHG Baseline plus the amount of Tier 4 energy delivered into Zone J, HQUS will be permitted to "bank" the surplus energy, effectively creating a credit in the amount of the surplus. The modification also allows HQUS to "borrow" by enabling HQUS to sell a full complement of Tier 4 RECs in years in which its production would not create a sufficient Supplier GHG Baseline Limit to permit HQUS to do so. Any banking and

[37] Order at 89.

> borrowing over time would be accounted as a net positive or negative balance.[38]

If approved by the Commission, the contract would inappropriately allow HQUS to satisfy the Supplier GHG Baseline during the first part of the contract term without building any incremental renewable generation and then meet its obligation with new renewable generation built or contracted for years in the future that its affiliates would likely develop anyway to meet their retail load obligations in Québec and other long-term commitments.[39]

Any new renewable generation HQUS builds or for which it contracts after the date of the Order for any reason is also inappropriately deemed incremental under the contract so long as the generation's associated RECs do not receive compensation under any other tier of the CES. Under the banking and borrowing mechanism of its proposed contract, HQUS is entitled to receive compensation for Tier 4 RECs associated with up to 10,950,000 MWh of electricity delivered annually to Zone J without having to demonstrate that its renewable generation is additional to the Supplier GHG Baseline. It can continue to receive Tier 4 REC compensation without adding any new generation until it "borrows" 80 TWh of production. Assuming HQUS delivered 10,950,000 MWh of electricity annually to Zone J, which is the maximum delivered quantity eligible for Tier 4 REC compensation, it would not have to demonstrate any additional renewable generation for seven years. If HQUS delivers less energy than the maximum quantity—which is likely because HQUS has only committed to supply installed capacity to Zone J during the summer capability period and the minimum delivery requirement is only 40%

[38] Petition at 40.

[39] Notably, HQUS's affiliate, Hydro Québec, announced this past December that it is "launching calls for tenders in order to meet the long-term electricity needs of its Québec customers through blocks of energy determined by Québec government regulations. One of the calls for tenders is for a block of 480 MW from renewable energy sources and the other one is for a block of 300 MW generated by wind power." See Hydro Québec Press Release, *Hydro-Québec issues calls for tenders for 480 MW and 300 MW*, http://news.hydroquebec.com/en/press-releases/1784/hydro-quebec-issues-calls-for-tenders-for-480-mw-and-300-mw/.

of the Bid Quantity of 10,402,500 MWh—it could potentially continue to be compensated for Tier 4 RECs without satisfying the Additionality Requirement for many years beyond the first seven.

The banking and borrowing mechanism also violates the Commission's strict requirement limiting the conditions under which a supplier can be excused from compliance with the Supplier GHG Baseline. The Commission ruled in its Order that "NYSERDA should have the flexibility to develop rules for suppliers to satisfy the Suppler GHG Baseline through annual averaging and to implement contract provisions that excuse the supplier from compliance with the Supplier GHG Baseline only in temporary, force majeure-type circumstances that fall entirely out of the supplier's control."[40] The Petition acknowledged that the Order authorizes NYSERDA to "'excuse the supplier from compliance with the Supplier GHG Baseline' under 'temporary force majeure-type circumstances that fall entirely out of the supplier's control.'"[41] The Petition claimed that the banking and borrowing mechanism "is intended to provide HQUS with limited flexibility to accommodate extreme water flow shortages that are beyond its control."[42]

The HQUS contract, however, explicitly adjusts the Supplier GHG Baseline to reflect the effects of a force majeure event and does nothing to limit HQUS's use of the banking and borrowing mechanism to production shortfalls due to extreme water flow shortages and other temporary force majeure-type circumstances. Section 7 of Exhibit H to the contract, "Calculation of Supplier GHG Baseline Limit and Adjustments to Supplier GHG Baseline," provides:

[40] Order at 90.

[41] Petition at 41 (quoting Order at 90).

[42] Petition at 41.

> 7. If a Force Majeure event affects a facility included in calculation of the Supplier GHG Baseline, then the Supplier GHG Baseline shall be equitably adjusted to reflect the effects of such Force Majeure on the number of annual megawatt-hours that NYSERDA attributed to such facility in the Supplier GHG Baseline calculation. . . .[43]

HQUS would be permitted to borrow Tier 4 RECs no matter the cause of the shortfall, even if HQUS decided to sell its incremental production and associated RECs to a different buyer for a higher price or decided to not build or contract for any new renewable generation, *i.e.*, not force majeure-type circumstances.

The Petition states that the contract also permits HQUS:

> to mitigate the risk of accumulated deficits by including in the calculation of its annual production (i) Tier 1 RECs produced during the Contract Delivery Term that it transfers to NYSERDA at no cost, and (ii) the benefits of new demand side management and other programs and actions intended to reduce electricity and energy consumption in Québec that applicable regulators in Québec have authorized after the effective date of the HQUS Contract. . . .[44]

Under the Supplier GHG Baseline, only hydropower generated by the supplier and non-hydropower renewable generation that satisfies the Tier 4 vintage requirement and meets the definition of "renewable energy systems" under the CLCPA can be used to satisfy the baseline. In its Order, the Commission ruled that non-hydropower renewable generation must achieve commercial operation after the date of the Order to be eligible for Tier 4.[45] "The purpose of the Tier 4 program is not only to increase the quantity of renewable energy into Zone J, but also to increase the quantity of renewable energy consumed in the State generally. There would be insufficient

[43] Case 15-E-0302, *supra*, Tier 4 Petition Appendix B (HQUS Contract) (Nov. 30, 2021), at H1–H2.

[44] Petition at 40.

[45] Order at 85.

public benefit to providing Tier 4 compensation for non-hydropower resources that are already operational."[46]

The HQUS contract violates the Supplier GHG Baseline because it would allow HQUS to satisfy the baseline with Tier 1 RECs from projects it does not own or have a contract with to procure energy. Tier 1 RECs are produced by generators using new renewable energy resources that entered commercial operation on or after January 1, 2015. As the vintage date for Tier 1 RECs is almost six years before the vintage date for Tier 4 RECs, HQUS would be able to satisfy the baseline with renewable projects that are already operational, in contravention of the Commission's goal that the Tier 4 program increase the quantity of renewable energy consumed in the State. There is no requirement in the contract that the Tier 1 RECs be associated with energy produced by new renewable generation developed after the date of the Order and no requirement that the energy be delivered to Zone J. With respect to the demand side management to reduce electricity and energy consumption in Québec, it clearly does not meet the definition of "renewable energy systems" under the CLCPA and provides no economic benefit to New York.

The HQUS contract impermissibly allows the aggregate savings from demand side management and other programs to be counted as Tier 4 renewable energy to Zone J. The effect is to let all the achieved growth in the load of HQUS's affiliate, Hydro Québec, plus the claimed incremental demand side program savings to be backfilled with fossil energy. If the Commission does not reject the HQUS contract, it should, in addition to the other changes recommended herein, direct NYSERDA to adjust the Supplier GHG Baseline in the contract upward to capture

[46] *Id*.

any growth in Hydro Québec's service territory load and only reduce it if there is a net reduction in service territory load.

Third, unlike the CPNY contract, in which CPNY will provide installed capacity to Zone J in both the summer and winter capability periods, under the HQUS contract, HQUS will provide installed capacity to Zone J during the summer capability period only.[47] While summer capacity is currently more important to Zone J because Zone J's peak demands occur during summer months, New York State is projected to become a winter peaking system by 2041 and possibly much earlier if the State is aggressive at electrifying other energy usage.[48] Zone J is expected to switch to winter peaking even earlier.[49] While today the reliability value of installed capacity is much higher in the summer than in the winter, that will change as winter peak loads catch up to and then pass summer peak loads. Moreover, the predominant reliability risk may switch to the winter faster than the relative seasonal peaks because solar, one of the major proposed CLCPA resource additions, provides essentially no reliability benefit in the winter as the winter peak is expected to be after the sun sets.

The failure to include installed capacity during the winter for nearly half the life of the proposed 25-year contract when New York will need that capacity raises serious questions regarding the reliability benefits of the HQUS contract that the Commission must not ignore. Other than noting that HQUS will not be committing to provide any winter capacity, the Petition is silent, and did not provide any analysis or support, with respect to whether NYSERDA's

[47] Petition at 15, 26.

[48] *See* 2021 NYISO Load and Capacity Data Gold Book, Table I-1a: NYCA Baseline Energy and Demand Forecasts at 17, and Figure I-4: NYCA Baseline Peak Forecast Comparison–Coincident Peak, MW at 19, https://www.nyiso.com/documents/20142/2226333/2021-Gold-Book-Final-Public.pdf/b08606d7-db88-c04b-b260-ab35c300ed64.

[49] *See id.*, Table I-3a: Baseline Summer Coincident Peak Demand Historical & Forecast at 24, and Table I-3b: Baseline Winter Coincident Peak Demand, Historical & Forecast at 25.

recommendation adequately accounted for the shift in the reliability needs and the mismatch between those needs and the capacity obligations of HQUS under the contract.

III. CONCLUSION

For the foregoing reasons, the HQUS contract is not in the public interest and the Commission should reject it. If the Commission nevertheless approves the HQUS contract, it should condition its approval on NYSERDA and HQUS modifying the contract to remove the banking and borrowing mechanism to ensure that the energy HQUS delivers to Zone J under the contract satisfies the Additionality Requirement and require that HQUS provides installed capacity to Zone J during the winter capability period.

Respectfully submitted,

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Dated: February 7, 2022