



November 25, 2020

Hon. Michelle L. Phillips  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Case 18-E-0130 – In the Matter of Energy Storage Deployment Program

Dear Secretary Phillips:

Please find attached for filing in the above-referenced case the Comments of Independent Power Producers of New York, Inc. and Alliance for Clean Energy New York, Inc.

Respectfully submitted,

/s/ Matthew Schwall

Matthew Schwall  
Director, Market Policy &  
Regulatory Affairs  
Independent Power Producers of  
New York, Inc.

Cc: Active Parties

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

In the Matter of Energy Storage  
Deployment Program

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Case 18-E-0130

**COMMENTS OF INDEPENDENT POWER PRODUCERS OF NEW YORK  
AND ALLIANCE FOR CLEAN ENERGY NEW YORK  
ON JOINT UTILITIES PETITION**

Independent Power Producers of New York, Inc. (“IPPNY”)<sup>1</sup> and Alliance for Clean Energy New York, Inc. (“ACE NY”)<sup>2</sup> submit these comments in response to the October 30, 2020, petition<sup>3</sup> filed by the Joint Utilities<sup>4</sup> with the New York Public Service Commission (the “Commission”) in the above referenced case requesting modification of certain requirements in the Commission’s *Order Establishing Energy Storage Goal and Deployment Policy*.<sup>5</sup> The Joint Utilities request modification on three points to be incorporated into future solicitations for energy storage resources (“ESRs”) in compliance with the Energy Storage Order: (1) an extension of the in-service date for storage resources from December 31, 2022 to no later than December 31, 2025, (2) an extension of the maximum dispatch rights contract duration from the

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<sup>1</sup> 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. These comments represent the position of IPPNY as an organization, but not necessarily the views of any particular member with respect to any issue.

<sup>2</sup> ACE NY is a member-based organization with a mission of promoting the use of clean, renewable electricity technologies and energy efficiency in New York State, in order to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution.

<sup>3</sup> Case 18-E-0130, Joint Utilities Petition to Modify the Energy Storage Order to Improve Procurement Results (October 30, 2020) (“Petition”).

<sup>4</sup> The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>5</sup> Case 18-E0130, In the Matter of Energy Storage Deployment Program, Order Establishing Energy Storage Goal and Deployment Policy (December 13, 2018) (“Energy Storage Order”).

current “up to seven (7) years” to “up to ten (10) years,” and (3) the specification of an additional procurement option whereby the utility could solicit and purchase a storage project from a developer upon project operation and, after an established ownership period, seek to sell the storage project if the sale would produce a customer benefit.

IPPNY and ACE NY support the Joint Utilities requests for an extension of the in-service date and the maximum dispatch rights contract duration for ESRs, subject to the additional requirements suggested herein, but oppose the request that the utilities be afforded the option to purchase and own a storage project from a developer upon project operation and subsequently sell the project if the sale would produce a customer benefit. As the Commission has repeatedly concluded, utility ownership of generation should generally be prohibited or, with respect to ESRs, limited to narrow circumstances.

**I. THE COMMISSION SHOULD REJECT THE JOINT UTILITIES REQUEST TO OWN ENERGY STORAGE RESOURCES.**

The Joint Utilities fail to demonstrate a compelling reason why the Commission should deviate from its position on utility ownership of ESRs as first outlined in its Order Adopting Regulatory Policy Framework and Implementation Plan<sup>6</sup> and reaffirmed most recently in its Energy Storage Order.<sup>7</sup> As the Commission has found in various proceedings, energy services should be provided cost-effectively by private developers on a competitive basis rather than by utilities through rate-of-return regulation.<sup>8</sup>

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<sup>6</sup> Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, *Order Adopting Regulatory Policy Framework and Implementation Plan* (February 26, 2015) at 66-69.

<sup>7</sup> Energy Storage Order at 43-44.

<sup>8</sup> See, e.g., Case 14-E-0302, *Petition of Consolidated Edison Company of New York, Inc. for Approval of Brooklyn Queens Demand Management Program*, Comments of Independent Power Producers of New York, Inc. (Oct. 6, 2014), at 2–3, 14–15; Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the*

ESRs are considered generating units. Allowing utility-owned generation, even temporarily, would be a major step backward from years of Commission policy supporting robust competitive electricity markets in New York by generally prohibiting utilities from owning generation. The Commission's long-standing pro-competition policies implemented over the past twenty years are unequivocal that: private investors have a greater incentive to lower costs than utilities under cost-of-service regulation; private investors and their shareholders should bear the risks of generation ownership; and transmission and distribution ("T&D") should be separated from generation to eliminate the potential that T&D utilities that own generation could exercise vertical market power.<sup>9</sup> It is impossible to fairly compare the costs and benefits of a proposed project that will obtain cost-of-service, rate-based recovery with a private developer's proposed project that must rely on contractual payments and market revenues for cost recovery. A project that is willing to cap the total cost exposure to consumers through a combination of contractual payments and properly designed competitive market revenues would ultimately be more beneficial to customers than a cost-based solution that may have a lower initial cost estimate (making it *appear* to be the better choice) but also retains the ability to seek recovery of all costs without limitation.

In its Energy Storage Order, the Commission found "no compelling reason to modify its stated preference for third-parties to develop" behind-the-meter ESRs, and, in the case of grid-connected ESRs, limited utility ownership to compensating for failures in the marketplace and other specifically delineated situations.<sup>10</sup> In their Petition, the Joint Utilities suggest that, as part

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*Energy Vision*, IPPNY Comments (Sept. 22, 2014), at 6, 12–15; Case 14-M-0101, *supra*, IPPNY Comments (July 18, 2014), at 8–16; Case 18-E-0071, *In the Matter of Offshore Wind Energy*, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (July 17, 2018).

<sup>9</sup> Cases 96-E-0900 et al., *In the Matter of Orange & Rockland Utilities, Inc.'s Plans for Electric Rate Restructuring Pursuant to Opinion 96-12*, Statement of Policy Regarding Vertical Market Power (July 17, 1998).

<sup>10</sup> Energy Storage Order at 44.

of the utilities’ requirements under the Energy Storage Order to solicit proposed ESR projects from bidders, adding an option for bidders to sell the ESR project to the utility would address concerns regarding the uncertain nature of NYISO market revenues available to ESR projects during the life of those projects and could appeal to entities more interested in developing than owning ESRs, such as engineering, procurement, and construction (“EPC”) firms.<sup>11</sup> The Joint Utilities do not claim that the marketplace has failed to produce ESR bids for the utilities’ consideration. To the contrary, it is clear from the Petition that the Joint Utilities received and evaluated bids but did not *all* enter into contracts. Though not explicitly stated in the Petition, it is alluded that the decision not to enter into contracts to procure the full 350 MW of ESRs required by the Energy Storage Order is due to uneconomic bids.<sup>12</sup> Utility ownership of ESR projects will not improve the economics of those projects, EPC firm developed or otherwise, or alleviate concerns regarding uncertain wholesale market revenue streams, it will simply shift the risk of such uncertainty onto the backs of utility ratepayers. The notion that the option for developers to sell completed projects to the Joint Utilities will appeal to EPC developers ignores the fact that developers of utility-scale solar and wind projects that have entered into Clean Energy Standard Tier 1 contracts have sold projects to third parties after entering into contracts.<sup>13</sup> There is no reason that same strategy would not be exercised by ESR developers. Furthermore, the rapid pace of evolution of ESR technologies is exactly the reason why the Commission should stay the course as it will preserve the mechanism in which electric

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<sup>11</sup> Petition at 5.

<sup>12</sup> *Id.* at Footnote 3.

<sup>13</sup> See Joint Petition of Bluestone Wind, LLC, Calpine Wind Holdings, LLC & Northland Power New York Wind LLC, for a Declaratory Ruling That No Further Review is Required of Upstream Ownership Transfer, or in the Alternative, for Approval of the Proposed Transaction Pursuant to § 70 of the Public Service Law, *Declaratory Ruling on Review of Transfer Transaction* (July 17, 2020), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B03899F96-BA5F-43CA-BA30-AA8BB1E1EEB3%7D>.

consumers will most immediately benefit from the innovation and cost reductions being achieved by competitive developer-owned projects.

As the NYISO continues to develop its ESR market participation rules, which have advanced significantly in 2020 with Federal Energy Regulatory Commission (“FERC”) acceptance of the NYISO’s proposed tariff revisions to allow full ESR participation in its wholesale energy, ancillary services and capacity markets in compliance with FERC Order 841, developers will have greater certainty with respect to forecast market revenues, which will be reflected in more precise bids in response to future utility solicitations.<sup>14</sup> Additional new market rules, such as the NYISO’s recently approved Hybrid Storage Model, which allows market participation by ESRs co-located with front-of-the-meter generators, will provide more certain revenue streams for those developers submitting bids in response to the utilities’ solicitations.<sup>15</sup> In 2021, the NYISO plans to continue developing new market rules for hybrid storage resources. Other market enhancements adopted in 2020, including the Ancillary Services Shortage Pricing project which increased the value of reserves during shortage conditions, will provide new revenue streams for ESRs that were not finalized at the time developers submitted bids to the utilities.<sup>16</sup> Moreover, the NYISO is continuing its ongoing work through its Comprehensive Mitigation Review initiative to develop enhancements to its buyer-side market power mitigation (“BSM”) measures and its capacity market structure in general that may provide greater revenue

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<sup>14</sup> Press Release, NYISO Implements Industry-Leading Rules for Energy Storage Resources, available at <https://www.nyiso.com/-/press-release-7c-nyiso-implements-industry-leading-rules-for-energy-storage-resources>.

<sup>15</sup> See Motion # 5: Motion of the NYISO Management Committee to approve and recommend the “Hybrid Storage: Collocated Storage Resources (CSR) Market Design Proposal” (November 18, 2020), available at <https://www.nyiso.com/documents/20142/16885911/11182020%20MC%20final%20motions.pdf/9929e383-a5a4-2c24-7907-676e81d1559d>.

<sup>16</sup> See Motion # 3: Motion of the NYISO Management Committee to approve and recommend the “Ancillary Services Shortage Pricing” proposal (November 18, 2020), available at <https://www.nyiso.com/documents/20142/16885911/11182020%20MC%20final%20motions.pdf/9929e383-a5a4-2c24-7907-676e81d1559d>.

certainty to ESRs.<sup>17</sup> Similarly, the NYISO has developed a carbon pricing proposal which would increase the energy revenues available to non-carbon emitting generators, including ESRs, while simultaneously reducing the likelihood that such resources are subject to the BSM measures.<sup>18</sup>

Even in the narrowly delineated circumstances under which the Commission has determined that the utilities may own ESRs, e.g., in the event of a market failure,<sup>19</sup> utility ownership should be an absolute last resort. Rather, the Commission should direct the Joint Utilities to hold a second solicitation, with clearer and more specific guidelines, with the new in-service date and contract duration terms, as described *infra*, and provide sufficient time for response so bidders can be better informed about the various ongoing market changes benefitting ESRs before the Commission considers whether to allow the Joint Utilities to own ESRs.

**II. THE COMMISSION SHOULD ACCEPT, SUBJECT TO CONDITION, THE REQUESTS FOR AN EXTENSION OF THE IN-SERVICE DATE AND MAXIMUM DISPATCH RIGHTS CONTRACT DURATION FOR ESRs.**

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<sup>17</sup> See Comprehensive Mitigation Review Project presented at the October 27, 2020, ICAPWG meeting, available at <https://www.nyiso.com/documents/20142/16364783/6%2020201027%20NYISO%20-%20Comprehensive%20Mitigation%20Review%20Update%20vFinal.pdf/3da56cd5-c431-ece2-b801-d522fb6f1aaa>. In 2020, the initiative resulted in stakeholders approving enhancements to the BSM measures that would allow public policy resources, such as ESRs, to be evaluated for a BSM exemption, under certain market conditions, in advance of non-public policy resources. Though FERC rejected the proposed associated tariff revisions, the NYISO filed a request for rehearing.

<sup>18</sup> See 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 Market*, Analysis Group (October 3, 2019), at 41-43, <https://www.nyiso.com/documents/20142/2244202/Analysis-Group-NYISO-Carbon-Pricing-Report.pdf/81ba0cb4-fb8e-ec86-9590-cd8894815231>; see also, Samuel A. Newell et al., *Pricing Carbon into NYISO's Wholesale Energy Market to Support New York's Decarbonization Goals*, The Brattle Group (Aug. 10, 2017), <https://www.nyiso.com/documents/20142/2244202/2017-Brattle-NY-Carbon-Study.pdf/156a738d-e471-ccad-e146-07ac593ec0c3>.

<sup>19</sup> Energy Storage Order at 44.

If the Commission wishes to improve the cost-competitiveness and effectiveness of future ESR solicitations, it should adopt the Joint Utilities' in-service date recommendation, subject to condition, and contract duration recommendation. IPPNY' and ACE NY's members were among the developers who submitted bids to the Joint Utilities in response to the initial solicitations. In some cases, the Joint Utilities failed to respond or follow up to requests by the developers for additional information, and provided no justification for why bids were ultimately not selected. Notably, the Joint Utilities do not elaborate in the Petition, beyond indirect references to cost-competitiveness, as to why contracts were not awarded to meet the full 350 MW requirement of the Energy Storage Order. Therefore, should the Commission extend the in-service date requirement from December 31, 2022 to no later than December 31, 2025, the Commission should include enforcement provisions that prevent the Joint Utilities from seeking an additional extension of the in-service date and require the Joint Utilities to follow through the RFP process to completion, ultimately selecting and entering into a contract with winning bidders.

### **III. CONCLUSION**

IPPNY and ACE NY respectfully request that the Commission reject the Joint Utilities recommendation that an additional procurement option be allowed whereby the utility could solicit and purchase a storage project from a developer upon project operation and, after an established ownership period, seek to sell the storage project if the sale would produce a customer benefit. To improve the developers' bids received in a second round of solicitations by the Joint Utilities, IPPNY and ACE NY request that the Commission accept the recommendation that the in-service date, subject to the conditions suggested herein, and the contract duration for ESRs be extended.



Respectfully submitted,



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Dated: November 25, 2020

Cc: Active Parties