



**AEE AND ACE-NY COMMENTS IN RESPONSE TO THE PROCEEDING ON MOTION OF
THE COMMISSION ASSESSING IMPLEMENTATION OF AND COMPLIANCE WITH THE
REQUIREMENTS AND TARGETS OF THE CLIMATE LEADERSHIP AND COMMUNITY
PROTECTION ACT
Case No. 22-M-0149**

Advanced Energy Economy (“AEE”) and the Alliance for Clean Energy New York (“ACE NY”)¹ are submitting these Comments in response to the New York Public Service Commission’s (“Commission”) request for public input concerning the issue of utility ownership of distributed energy resources (“DERs”) and large-scale renewable electric generation assets. AEE is a national association of businesses that are making the energy we use secure, clean, and affordable. AEE works to accelerate the move to 100% clean energy and electrified transportation in the U.S. Advanced energy encompasses a broad range of products and services that constitute the best available technologies for meeting our energy needs today and tomorrow. These include energy efficiency, demand response, energy storage, solar, wind, hydro, nuclear, electric vehicles, and the smart grid. AEE represents more than 100 companies in the \$238 billion U.S. advanced energy industry, which employs 3.2 million U.S. workers, including 157,000 individuals in the Empire State. 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 to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. ACE-NY’s diverse membership includes companies engaged in the full range of clean energy technologies as well as consultants, academic and financial institutions, and not-for-profit organizations interested in their mission. Our detailed comments follow.

Sincerely,

Leah Meredith
Policy Principal
Advanced Energy Economy
lm Meredith@aee.net

Deb Peck Kelleher
Director, Policy Analysis and Operations
Alliance for Clean Energy New York
dpeckkelleher@aceny.org

¹ Collectively referred to as “we”, “our”, the “Advanced Energy Industry” or “Advanced Energy Companies.”

Introduction

We appreciate the Commission's focus on the implementation of the 2019 Climate Leadership and Community Protection Act ("CLCPA") and understand that the Commission's investigation into utility-owned generation was borne from concerns that New York may not achieve its mandated renewable energy goals. Advanced Energy Companies believe that the investor-owned utilities ("IOUs") have a critical role to play in the attainment of 70% renewable energy generation by 2030 and a zero-emissions electric grid by 2040. However, the ownership and operation of power generating facilities, whether DERs or large-scale renewable facilities, should not be one of those roles. Rather, Advanced Energy Companies agree with and continue to support the policies previously articulated by the Commission that restrict regulated IOUs from owning and operating generation except in limited circumstances and situations.

Advanced Energy Companies look forward to further engagement with the Commission as it continues this important investigation into CLCPA implementation. Due to the complexity of policies and practices concerning CLCPA implementation, we encourage the Commission to complete its examination of utility-owned generation assets and pivot its efforts to addressing the existing and well-known barriers to the deployment of large-scale renewables, such as transmission capacity, interconnection reform and siting and permitting delays. The Advanced Energy Industry will continue its involvement on this topic as additional opportunities and more in-depth discussions arise related to CLCPA implementation and accelerating the deployment of large-scale renewables.

Should the Commission modify its current policy on vertical market power? If so, in what ways?

Advanced Energy Companies do not believe that the Commission should modify its current policy on vertical market power. The disadvantages to utility ownership of DERs or renewable energy generation far outweigh any possible benefits. Modifying the Commission's policy on vertical market power and enabling IOUs to develop and own DERs (beyond the limited circumstances where the Commission has approved the option of utility ownership, such as energy storage that serves a distribution system function) or renewable energy generation will not help New York meet its decarbonization goals on the aggressive timeline established by the CLCPA. Instead, as it has already started to do, the Commission should focus its efforts related to the implementation of the CLCPA on the root causes of the slow pace of renewable energy deployment in New York, namely transmission capacity constraints, the uncertainty around local permitting and tax agreement issues, and the lengthy interconnection process at the New York Independent System Operator ("NY-ISO"), New York's regional transmission organization. The Commission's renewed focus on transmission investment and planning to unbottle renewables in Case 20-E-0197, and the creation of the Office of Renewable Energy Siting through the Accelerated Renewable Energy Growth and Community Benefit Act, are two examples of actions that

we believe are well-matched to the challenges the state faces. These efforts are part of the larger effort to clear the significant backlog of renewable energy projects already awarded REC contracts by NYSERDA.

We also note that the Commission has previously rejected the need to reconsider the option of allowing utility ownership of renewable energy resources in Case 15-E-0302, and has long promoted competitive, private ownership of generation projects, in part to ensure that investors bear the risk of cost overruns and financial loss, not consumers. From the Order Adopting a Clean Energy Standard: "Staff also considers the potential for utility-owned generation and recommends that there was no basis to deviate from the policy direction adopted in the REV Framework Order that generally prohibits utility ownership of generation resources, in order to promote entry by market participants."² The Commission reiterated their position in 2000 in the Order Modifying Tier 1 Renewable Procurements: "The Commission similarly rejects the need to reconsider the option of allowing utility ownership of renewable resources. There is no basis to deviate from the policy direction adopted in the CES Framework Order and the REV Framework Order that generally prohibits utility ownership of generation resources in order to promote entry by market participants."³ We contend that there is no fundamental basis for the Commission to deviate from these policies, And rather, the Commission should continue to pursue policies that maximize competitive market solutions while also supporting utility investments that are a squarely aligned with their unique position as monopoly enterprises, and do not serve to undermine the further development of competitive markets.

Indeed, the Commission's determination that independent power companies have the ability to efficiently build and operate generation was one of the main reasons the Commission decided to restructure New York's electric utility industry more than two decades ago. As cited in the May 12 Order accompanying this docket, "The Commission's Vertical Market Power Policy established a presumption that utility ownership of generation has anti-competitive consequences and that vertical market power 'occurs when an entity that has market power in one stage of the production process leverages that power to gain advantage in a different stage of the production process.'"⁴ This overall approach to the fundamental market design in New York was reaffirmed by the Commission policies adopted in the Clean Energy Standard ("CES") Framework Order and the Reforming the Energy Vision ("REV") Framework Order that generally prohibits utility ownership of generation resources in order to promote entry by other market participants.

² Case 15-E-0302, [Order Adopting a Clean Energy Standard No. 954](#), (issued August 1, 2016), Page 42.

³ Case 15-E-0302, [Order Modifying Tier 1 Renewable Procurements](#), (issued January 16, 2020), Page 17

⁴ Cases 96-E-0900 et. al., [O&R's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12](#), Statement of Policy Regarding Vertical Market Power (issued July 17, 1998), Appendix I.

In the time that has passed since the CES and REV framework orders were issued, the main thing that has changed is that the clean energy targets that the Commission had been pursuing have been codified in statute in the CLCPA. Renewable technologies and DERs have also generally become more mature and economically competitive. The State has supported both large-scale renewables, distributed generation, and other DERs through a portfolio of programs, including the NYSEERDA REC purchasing program, NY-Sun, updates to standard interconnection requirements for projects under 5MW, customer data and system data access policies, and rate design reforms (including VDER and the more recent changes to standby/buyback rates). The competitive market response to the State's clean energy policies has been robust (as illustrated below), which is a strong indicator that New York's current approach is viable and that the competitive market is ready and able to do its part to meet the important goals of the CLCPA.

Advanced Energy Companies contend that the slow pace of renewable energy project development is largely due to headwinds that cannot be solved by eliminating competitive markets and returning control of generation to utilities. We therefore encourage the Commission to seek out robust solutions to the number of factors that have already been shown to limit the deployment of large-scale renewables in New York State, namely delays in siting, permitting and interconnection, and the need to expand transmission capacity. In this regard, we note the recent approvals by the Commission of a number of transmission projects in Case 20-E-0197, with more expected to follow. In addition to the work already underway at the Commission to accelerate transmission expansion, New York State should consider new investment vehicles for transmission, such as public-private partnerships or establishing statewide transmission authorities, similar to what is currently in place in Colorado and New Mexico, to help build transmission capacity to support more renewables coming online. There are ample projects in various stages of development to meet a significant portion of the 2030 goal of 70% renewable generation. Efforts to speed the deployment of large-scale renewables in New York State will be best served not by reconsidering the current policy on vertical market power, but by focusing on the expansion of transmission capacity.

As discussed in Case 15-E-0302, Advanced Energy Companies agree that power purchase agreements ("PPAs") are a tried-and-true procurement structure that can accelerate renewable development activity to the scale necessary to achieve the 70% goal, and can do so at least-cost, as borne out in the 2021 Combined CES Annual Financial Status Report. Further, the PPA approach can be implemented in a manner that is fully consistent with competitive wholesale markets and federal law, and consistent with existing restrictions on utility-ownership of generation assets. NYSEERDA procured PPAs offer the most chance for success in attracting investment and construction in New York, and can advance renewable energy goals at least cost and risk to New York ratepayers. The 2021 CES Financial Status Report also recognizes that PPAs lower overall costs. The NYSEERDA procured PPAs would be competitively procured and selected on the basis of the most benefits for the least cost.

With all that said, we appreciate the attention the Commission is giving to examining the role of utilities in facilitating renewable energy development as a tactic for hastening the deployment of large-scale renewables. However, we reiterate that the slow pace of renewable energy development is not due to a lack of interest or investment from private entities in New York State, but is instead related to uncertainty around local permitting and tax agreement issues, transmission constraints, and the lengthy interconnection process through NY-ISO. These barriers to deployment of large-scale renewables exist for all potential owners of renewable energy generation and will not be solved, or even addressed, by simply allowing IOUs to own renewable generation. There is no shortage of private entities or capital looking to build renewable energy projects in New York.

Should the Commission modify its current policy on utility ownership of DER assets? If so, in what ways?

The Advanced Energy Industry does not believe that the Commission should modify its current policy on utility ownership of DER assets. The Commission examined the issue of utility ownership of DERs in detail in the REV proceeding and adopted a framework that Advanced Energy Companies supported at the time and continue to support today. This framework for DER ownership prioritized competitive market solutions, strictly limited utility ownership options, and recognized the risks of utility ownership to the development of robust, competitive markets.

At the same time, the Commission laid out clear, limited circumstances when utility ownership could be appropriate, including ownership of energy storage that provides a distribution system function, and where there are clear market failures. By establishing clear roles for regulated utilities and competitive providers, the Commission laid the foundation for a growing, vibrant market for DER products and services. The Commission, in concert with other state agencies and the Administration, has continued to take actions to support the development of this market, including expanding the NY-Sun program, promulgating updates to standard interconnection requirements for projects under 5MW, establishing policies and systems to support improved access to customer data and system data, authorized significant investments in advanced metering infrastructure, and implemented innovative rate design reforms, including the VDER tariff and changes to standby/buyback rates. While we ask the Commission to continue to improve upon these DER actions, the existing policy framework that the Commission has established over nearly a decade sends clear signals to the competitive market that New York is an attractive market, while also providing utilities with the opportunity to invest in their networks in a manner that supports this market and the attainment of state climate goals. We also note that the Commission has devoted considerable attention to creating earnings opportunities for utilities centered around their role as the distribution system provider, including Earnings Adjustment Mechanisms and shared savings arrangements. Continuing to refine and strengthen these regulatory solutions can further align the utility business model with attaining state

climate goals cost-effectively leveraging a competitive market. We also note that the Commission has devoted considerable attention to creating earnings opportunities for utilities centered around their role as the distribution system platform provider, including Earnings Adjustment Mechanisms and shared savings arrangements. Continuing to refine these regulatory solutions can further align the utility business model with a competitive DER market.

If the Commission were to change course away from private sector provision of DER products and services, this would have a disruptive and chilling effect on both the private sector's pursuit of renewable energy project development, and, potentially, the utilities' pursuit of other clean energy initiatives. With expanding rate-based energy efficiency portfolios, significant onshore and offshore transmission needs, EV makeready investment, and further system buildout from beneficial electrification loads, utilities already have many places to invest and a lot that they must carry out successfully if New York is to reach its climate goals. As such, for the same reasons that we oppose changes to the Commission's current policy on vertical market power and utility ownership of renewable energy generation, we oppose changes to the current policy regarding utility ownership of DERs, as it risks crowding out private investment, reducing market participants, stifling innovation, and reducing options for customers.

Are there advantages to utility ownership of electric generation assets? If so, identify those advantage(s) and explain in what instances use of the advantage(s) should be justified/not justified.

The extent of the advantages to utility ownership of electric generation assets are enshrined in the Commission's existing DER policy, and the NYSEERDA Build-Ready Program is already designed to target difficult-to-develop projects and locations. In its design of the CES program, the Commission decided that privately-owned independent companies should be the entities owning and operating new renewable energy facilities in New York. In its design of other programs, the Commission has decided that regulated utilities should focus on the most cost-effective operation of the distribution system in a way that supports development of DER markets and the delivery of clean and renewable power, as well as investing in energy efficiency (for buildings and other electricity uses) and in make-ready investments, such as for electric vehicle charging.

As the Commission states in the May 12 Order accompanying Case 22-M-0149, "The issue of utility ownership of renewable energy generation assets must be considered in the context of what can best accelerate the market and be consistent with the public interest."⁵ Introducing utility-owned generation will hinder New York's competitive market and is likely to have a cooling effect on private

⁵ Case 22-M-0149, In the Matter of Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act, Order on Implementation of the Climate Leadership and Community Protection Act (issued May 12, 2022), Page 23.

investment in large-scale renewables in the State. Any claims that utility ownership can reduce prices is likely to be more than offset by the hollowing out of competition. There is no shortage of private entities or capital looking to build renewable energy in New York. In fact, NYSERDA has awarded more than 120 renewable energy projects totaling more than 14,000 megawatts under their CES request for proposals (“RFPs”). While it is unlikely that all approved projects will subsequently be built, these contracted projects stand to nearly double New York’s currently installed 6,400 MW of renewable energy generation. NYSERDA’s CES RFPs are for the purchase of renewable energy credits (“RECs”). Ratepayer support for buying RECs is only a small proportion of overall project development costs. The rest of those costs are borne by investors in independent project development companies, who then enter the competitive wholesale electricity market and sell energy, capacity, and other services to recover those costs. If their costs are higher than anticipated, private investors absorb the losses, not utility customers. Within the CES proceeding, the Joint Utilities argued that utility ownership had the advantage of retaining the renewable generation in-state beyond the initial period of NYSERDA REC contracts, whereas with independent ownership, it is possible that project owners would sell the output from their facilities into other states or regions. Relatedly, we are aware that Consolidated Edison has proposed up to 1,000 MW of utility-owned solar as part of its current rate case.⁶ In that proposal they repeat the argument that long-term ownership confers advantages by retaining that generation in state.⁵ Retaining that renewable generation in-state for the long term is indeed important for meeting the CLCPA targets. However, this alone does not justify the disruptions to the competitive market that introducing utility ownership would cause. Rather, the Commission should continue to work with the Administration, the NY-ISO and other stakeholders to develop market-based solutions that will encourage continued, long-term participation by renewable energy projects in the New York market.

Also in the above-referenced ConEd rate case, the utility has proposed the concept of a low-moderate income (“LMI”) customer clean energy credit, that would be tied to their ownership of the solar projects. This concept is similar to what was included in Senate Bill 8384/ Assembly Bill 9531, which failed to pass in the 2021-2022 legislative session. While we are highly supportive of efforts to address energy affordability for LMI customers, as well as seeking out ways for them to effectively participate in the clean energy marketplace, we have significant reservations about the design of the clean energy credit and its purported benefits, and therefore its potential to impact the Commission’s deliberations in the current proceeding. As we understand it, the clean energy credit would effectively increase the discount provided to LMI customers, in the form of a bill credit, by allocating net revenues from the solar projects to these customers. At the same time, the costs of the solar projects would be added to the general rate base with a commensurate increase in base rates for all customers. However, if one

⁶ Case 22-E-0064, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, 22-00217 (opened January 28, 2022).

starts with the premise that LMI customers are in need of higher discounts, then the fact that it would come from utility-owned solar projects, we believe, is largely irrelevant. The utilities could just as easily take the net revenues and distribute them to all customers, who would be paying for the projects via the rate base regardless, and then simply increase the support already being provided to LMI customers. Either way, the general rate base would be increasing its support for LMI customers by the same amount, and the utility-owned solar projects merely become an alternative way to package those dollars, but do little, if anything, to change the net flow of dollars between base rates and discounts to LMI customers. If the Commission determines that the current amount of discounts for LMI customers is too low and should be increased, then that should occur regardless. If the level of discount currently is at the right level, then the creation of this clean energy credit should arguably be accompanied by a commensurate decrease in existing LMI programs. Either way, it seems to us that this does not fundamentally change the question as to whether or not utilities should be able to own renewable energy generation projects.

Are there disadvantages to utility ownership, in addition to those noted by the Commission in its Vertical Market Power and DER policy decisions? If so, identify those disadvantages and explain how they should be balanced against any advantages to utility ownership.

As stated in the Order on Implementation of the Climate Leadership and Community Protection Act which accompanies Case 22-M-0149, the Commission previously determined that “utility ownership of DERs would discourage investment from the competitive market and prove to be a distraction from the utility’s primary focus of operating its electric distribution system. The Commission ruled that, as a general rule, utility ownership of DERs would not be allowed unless markets have had an opportunity to provide a service and have failed to do so in a cost-effective manner...”⁷

If utility ownership is allowed, should there be limitations on regulated entities versus affiliates, or within regulated service territories versus outside the territory, etc.?

Our position with respect to DERs, which we articulated in comments in the REV proceeding, is that, to the extent that utilities are permitted to provide products and services that can readily be provided by the competitive market, only non-regulated affiliates should be allowed to do so, and only in locations that are served by utilities that they are not affiliated with. The same should be true of renewable energy generating resources. Moreover, appropriate codes of conduct need to be in place, and strictly enforced, to ensure that unregulated affiliates of utilities and independent competitive providers are truly competing on a level playing field. A number of utilities have established renewable

⁷ Case 14-M-010, Order Adopting Regulatory Policy Framework and Implementation Plan, REV Track One Order (issued February 26, 2015).

energy development affiliates that have made substantial investments and amassed considerable portfolios outside of their traditional distribution service territories. We feel an appropriate way to mitigate vertical market power concerns is by limiting affiliate renewable development to areas outside of a utilities service territory.

Conclusion

We appreciate the opportunity to communicate our objections to regulated utilities being allowed to own and operate power generation facilities in New York. As described above, we feel that the same factors that inspired the Commission to issue its policy on vertical market power in 1998 and its policy on utility ownership of DER assets in 2015 remain today. Further, since these policies were put in place, the private sector has proven its interest and ability to invest in New York and develop wind and solar projects in New York: the competition in all NYSERDA solicitations has been robust and the REC prices have remained affordable. In addition, since the utility ownership policies were reiterated by the Commission, there have been many additional complex tasks assigned to the utilities to support New York's clean energy transition, such as transmission planning. In short, New York's utilities have plenty to do and changing the utility ownership policy will distract from those efforts.