



ACE NY
ALLIANCE FOR CLEAN ENERGY NEW YORK, INC.



January 31, 2020

VIA ELECTRONIC FILING

Hon. Michelle Phillips
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

Re: Case 19-E-0530 – Proceeding on Motion of the Commission to Consider Resource Adequacy Matters

Dear Secretary Phillips:

Advanced Energy Economy Institute (AEE Institute), on behalf of Advanced Energy Economy (AEE), the Alliance for Clean Energy New York (ACE NY), the American Wind Energy Association (AWEA), and the Solar Energy Industries Association (SEIA), and pursuant to the *Notice Extending Reply Comment Deadline*, submits for filing reply comments in response to the August 8 *Order Instituting Proceeding and Soliciting Comments*.

Respectfully Submitted,

Ryan Katofsky
Managing Director
AEE Institute

Reply Comments in Response to Order Instituting Proceeding on Resource Adequacy Matters (Case 19-E-0530)

**Advanced Energy Economy Institute
Alliance for Clean Energy New York
American Wind Energy Association
Solar Energy Industries Association**

Introduction and Summary

Advanced Energy Economy Institute (“AEE Institute”), the Alliance for Clean Energy New York (“ACE NY”), the American Wind Energy Association (“AWEA”), and the Solar Energy Industries Association (“SEIA”) continue to applaud the New York Public Service Commission (“NY PSC” or “Commission”) for its foresight and initiative in opening this proceeding to investigate whether changes are needed to align the New York Independent System Operator’s (“NYISO’s”) resource adequacy provisions with the state’s energy and environmental policies. Given recent policy shifts at the Federal Energy Regulatory Commission (“FERC”) on similar issues at PJM Interconnection (“PJM”), the Commission’s actions have proven to be extremely timely. Our organizations collectively represent and work with a range of companies across the advanced energy industry, including large-scale and small-scale wind and solar, hydroelectric power, other renewable energy technologies, battery energy storage, demand response, and energy efficiency. These comments reflect the joint views of AEE Institute, working with Advanced Energy Economy (“AEE”),¹ ACE NY,² AWEA,³ and SEIA.⁴ These organizations are referred to collectively in these comments as the “advanced energy companies,” “we,” or “our.”

¹ AEE is a national business association representing leaders in the advanced energy industry. AEE supports a broad portfolio of technologies, products, and services that enhance U.S. competitiveness and economic growth through an efficient, high-performing energy system that is clean, secure, and affordable.

² ACE NY’s mission is to promote 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.

³ The American Wind Energy Association (AWEA) is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. The views expressed in this filing do not necessarily represent the views of each individual member of AWEA.

⁴ The Solar Energy Industries Association is the driving force behind solar energy and is building a strong solar industry to power America through advocacy and education. As the national trade association for the U.S. solar energy industry, which employs more than 242,000 Americans, we represent all organizations that promote, manufacture,

Our Initial Comments⁵ focused on providing guiding principles that are broadly applicable regardless of whether New York continues to delegate much of the responsibility for ensuring resource adequacy to the NYISO or assumes a greater role in the future. We did not express a preference for a continued NYISO role or an expanded state role, but instead posed a range of options, each with costs and benefits to consider. Since Initial Comments were filed, several parties (including AEE Institute and ACE NY), filed letters in support of extending the comment deadline to allow time to weigh the impact of a then-expected FERC order on PJM’s Minimum Offer Price Rule (“PJM MOPR Order”).⁶ The issues that were subsequently addressed in that order are highly relevant to the topics under consideration in this proceeding, and the change of direction signaled by FERC could have a significant impact on the options available to New York in this proceeding.

As we describe below, FERC’s order, if implemented without significant changes, will hinder the ability of clean energy to compete in PJM’s capacity market, and we expect that it would be much more challenging for New York to meet its clean energy goals without significant additional costs to ratepayers if the same policies were applied to the NYISO. Today, the NYISO assures resource adequacy for New York through its FERC-approved capacity market within the parameters established by the New York State Reliability Council. While we acknowledge concerns with the ability of the capacity market, as currently designed, to deliver on New York’s policy goals, we believe that properly designed competitive wholesale markets can facilitate efficient, cost-competitive outcomes and achievement of those policy goals, and do not at this time recommend that New York State (“NYS”) assume exclusive responsibility for ensuring resource adequacy. The Commission should continue to press for better alignment of the NYISO capacity market with NYS policy goals through solutions that would avoid the issues inherent in FERC’s recent PJM MOPR Order and/or that could be pursued in the event that FERC’s policy with respect to state-sponsored resources shifts. Well-designed competitive markets that give all resources and resource owners the opportunity to compete to meet the state’s clean energy goals remains the first, best option.

However, we also recognize that the position taken by FERC in its PJM MOPR Order raises the possibility that, if that position were extended broadly, NYS may be forced to assume this responsibility in the future. Many parties have already filed requests for rehearing at FERC, and such reconsideration and

install and support the development of solar energy. SEIA works with its 1,000 member companies to build jobs and diversity, champion the use of cost-competitive solar in America, remove market barriers and educate the public on the benefits of solar energy. The comments contained in this filing represent the position of SEIA as an organization, but do not necessarily reflect the views of any particular member with respect to any issue.

⁵ Initial Comments on the Order Instituting Proceeding and Soliciting Comments, Advanced Energy Economy Institute, Alliance for Clean Energy New York, American Wind Energy Association, Solar Energy Industries Association, filed in 19-E-0530 on November 12, 2019. (“Initial Comments”)

⁶ Calpine Corporation, et al. v. PJM Interconnection, L.L.C., 169 FERC ¶ 61,239 (2019) (“PJM MOPR Order”).

other appeals could change FERC’s policy. They should be allowed to play out. We further note that each RTO/ISO is different, and FERC’s policy decision in PJM certainly does not automatically apply to NYISO. Even with these caveats in mind, we still find that it would be prudent for the Commission to begin considering now how the state might go about taking on a greater role with respect to resource adequacy, and what the implications of that would be for costs and benefits to consumers and achievement of clean energy goals. The Commission should develop clear threshold criteria that would be used to determine whether and when the state should move to take more control of resource adequacy. The Commission should also initiate discussions aimed at structuring a transparent stakeholder process that would, if necessary, develop a state-regulated market-based resource adequacy mechanism.

Impact of the Recent FERC Order

In our initial comments, we urged the Commission to closely monitor FERC’s actions in the PJM proceeding (Dockets Nos. EL16-49 and EL18-178, et al.) regarding application of Buyer-Side Mitigation (BSM, known in PJM as the Minimum Offer Price Rule, or MOPR). Our comments advised that “[i]f FERC imposes or otherwise supports applying minimum offer price rules/BSM to resources designed to achieve PJM state policy objectives, then the NYPSC should strongly consider revising the manner in which capacity is procured in the state, because, if the current FERC commissioners support strong minimum offer price rules in PJM, they are likely to support them in NYISO’s ICAP market as well.”⁷

FERC has since issued a decision in that case, ordering PJM to significantly expand application of the MOPR to all new and existing capacity resources that receive or are eligible to receive “State Subsidies,” unless an exemption applies.⁸ Unfortunately, if FERC’s PJM MOPR Order stands without substantial modification, and if a similar approach were applied to the NYISO, the state’s ability to meet its clean energy goals cost-effectively through the NYISO markets would be threatened.

In particular, the PJM MOPR Order takes the following positions that would conflict with New York’s state goals as codified in the CLCPA:

- **Broad definition of State Subsidy:** The order contains a very broad definition of subsidy that encompasses almost all existing policy tools used by states to meet their lawful generation resource and environmental emissions goals.⁹ ZECs, compliance RECs, and potentially even

⁷ Initial Comments at 34-35.

⁸ *Calpine Corporation, et al. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019) (“PJM MOPR Order”).

⁹ FERC defines a State Subsidy as “A direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is (1) a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state, or an electric cooperative formed pursuant to state law, and that (2) is derived from or connected to the procurement of (a) electricity or electric generation capacity sold

voluntary RECs could be considered State Subsidies subject to the MOPR. Even eligibility for state support would be enough to qualify a unit as subsidized.

- **Broad application to advanced energy technologies:** The order rejects PJM’s proposal to exclude energy efficiency resources, and explicitly requires that demand response, energy storage, and “emerging technology” all be subject to the MOPR.¹⁰
- **High offer floors:** For new resources, PJM is required to calculate the offer floor at 100% of the net Cost of New Entry (CONE) (i.e., the typical cost to construct the resource type net of its energy and ancillary services market revenues).¹¹ Based on earlier filings by PJM, estimated offer floors for onshore and offshore wind and solar PV would be well above recent clearing prices in the PJM capacity auction, meaning that application of MOPR would exclude these resources from the capacity market.
- **No materiality thresholds:** FERC rejected PJM’s proposal to adopt two “materiality thresholds,” which would have limited the reach of the expanded MOPR by excluding (1) capacity resources with an unforced capacity rating of 20 MW or smaller, and (2) capacity resources that receive a subsidy that amounts to 1% or less of their actual or anticipated total revenues from energy, capacity, and ancillary services markets.¹² This means that even *de minimis* state support could result in the imposition of the MOPR on a resource, with no requirement that there be actual or likely price suppression as a result of the state subsidy.
- **All-or-Nothing Capacity Market Participation:** PJM has had a Fixed Resource Requirement (“FRR”) in its tariff that allows a utility to leave the capacity market and self-supply its own resource needs. A variation on this option was provided in the PJM case. FERC declined to require PJM to develop a Fixed Resource Requirement Alternative (FRR-A) that would have allowed states to remove individual resources subject to the MOPR, along with a commensurate amount of load, from the capacity market. While we noted the challenges with an FRR-A in our initial comments in this proceeding,¹³ the exclusion of this option forces states that wish to avoid application of the MOPR to state-sponsored or state-mandated resources to instead pursue a

at wholesale in interstate commerce, or (b) an attribute of the generation process for electricity or electric generation capacity sold at wholesale in interstate commerce, or (3) will support the construction, development, or operation of a new or existing capacity resource, or (4) could have the effect of allowing a resource to clear in any PJM capacity auction.” PJM MOPR Order at P 67.

¹⁰ PJM MOPR Order at 62.

¹¹ PJM MOPR Order at 59-62.

¹² PJM MOPR Order at 44-45.

¹³ See Initial Comments at 27-28.

“Full” FRR. Under a Full FRR, a utility would remove its entire load from the PJM capacity market and demonstrate to PJM that it holds sufficient capacity to satisfy its share of the region’s resource adequacy requirements.

If applied to the NYISO market, FERC’s order would have the effect of mitigating the capacity market participation of generation resources that New Yorkers are investing in to advance the state’s clean energy and emissions reduction goals. In light of FERC’s decision, the NYPSC must carefully evaluate its options to avoid this perverse outcome. The comments that follow offer additional advice to guide this evaluation.

FERC Frustrates Options for Working with the NYISO

There was overwhelming agreement in parties’ initial comments that NYISO rules are impeding New York from reaching its clean energy goals, and many parties indicated a strong preference for modifying NYISO rules rather than shifting responsibility for resource adequacy to the state. A few parties put forward ideas on how to integrate state goals and resource preferences into the NYISO ICAP market. While these ideas are worthy of consideration, they ultimately rely on approval from FERC—a result that its recent order now calls into question, at least in the near term. However, it is possible that the PJM MOPR Order will be amended and/or that the position of FERC with respect to the integration of state-supported resources into wholesale markets may shift by the time New York State is ready to implement an alternative to resource adequacy under NYISO, and that changes to NYISO rules might become a viable option once more. For this reason, options for reforming the NYISO should remain the first-best option, with the understanding that they have diminished near-term potential, but possible longer-term prospects at FERC.

Carbon Pricing Remains an Important Option that Could Pass FERC Scrutiny, but is Not Alone Sufficient

As noted in our initial comments, our organizations view adoption of a carbon price in the NYISO energy market as an important step to better align New York’s energy and environmental policy goals with short- and long-term price incentives in the wholesale market. Most other commenters similarly voiced support for applying a carbon price to the energy market and encouraged the Commission and NYISO to work together to move this priority forward.¹⁴ This proceeding is the appropriate and timely forum for the Commission to explore NYS endorsement of carbon pricing at the NYISO and to opine on NYISO’s

¹⁴ See, e.g., NYISO Market Monitoring Unit; Joint Utilities; Independent Power Producers of New York; New York City; NYISO; Exelon; New York Association of Public Power; and National Resource Defense Council, Sierra Club, Sustainable FERC Project, Environment America, and Vote Solar.

proposal. Importantly, the PJM MOPR Order does not explicitly identify a carbon price adder as a form of state subsidy that would be subject to MOPR, and could be reasonably interpreted to exclude a carbon price from the definition of a State Subsidy.¹⁵ We therefore view adoption of a carbon price as an achievable, near-term, no regrets solution to better align New York State's policy goals and NYISO's markets.

However, we reiterate that a carbon price alone will be insufficient to equip the state to meet its clean energy goals through the wholesale market, especially over the long term as NYS pursues its legal mandate to reach 100% emissions-free power within twenty years. In particular, as we emphasized in our initial comments, the harmful effects of BSM will water down the effectiveness of a carbon price as an incentive for new entry of clean energy resources unless BSM rules are changed. We note that Exelon's initial comments in this proceeding included a study showing that carbon pricing can help reduce the impacts of BSM in the short-term.¹⁶ This makes carbon pricing an important policy to respond to FERC's actions in a critical transition period so as to reduce ratepayer costs while New York is striving to achieve its CLCPA goals and is considering its future role in resource adequacy. However, even in the near term the study predicts that offshore wind and energy storage would still be subject to BSM because the higher costs of these resources may not be sufficiently reduced by a carbon price.¹⁷ Furthermore, the study only looks out to 2025, and therefore does not consider what would happen when the grid is running with a much higher percentage of clean resources and the impact of a carbon price adder will be diminished.¹⁸

Relatedly, a carbon price, unless set sufficiently high, may not provide an adequate price signal to facilitate financing of new clean energy resources needed to meet the CLCPA targets. As we pointed out in our initial comments, this is particularly true for resources such as energy storage that have low MWh output and therefore receive limited benefit from a MWh-based incentive such as a carbon price adder. This is why we support carbon pricing as a policy complementary to the State's procurement programs for clean energy. While we continue to support and encourage adoption of a carbon price in the NYISO markets, we therefore urge the Commission to also explore additional, complementary solutions for the longer term.

¹⁵ FERC's definition of a State Subsidy is quoted in *supra* n. 9. A carbon price increases the cost of carbon-polluting units in a manner not dissimilar to costs imposed on such resources by other environmental regulations, which are not contemplated by the MOPR. We note that several parties requested clarification from FERC that a carbon tax or cap-and-trade program such as the Regional Greenhouse Gas Initiative would not be considered a State Subsidy under the expanded MOPR. *See, e.g.,* PJM Rehearing Request at 22-23; Exelon Rehearing Request at 5.

¹⁶ Exelon comments at Attachment B.

¹⁷ The study projects that all incremental energy storage would be subject to BSM even with a carbon price that is otherwise largely effective at exempting clean resources from BSM. *See Id.* at 6-7.

¹⁸ Other commenters agree that carbon pricing is a near-term tool that will have more limited impact in the long term. *See* National Resource Defense Council, Sierra Club, Sustainable FERC Project, Environment America, and Vote Solar at 9, "Over the long term, when fossil resources are not on the margin, the carbon price value could be drastically lower."

New York Should Establish a Threshold for When it May Need to Take Steps to Assume Greater Control of Resource Adequacy

We continue to press for FERC to modify or withdraw its PJM MOPR decision, and continue to advocate for competitive wholesale markets that provide for both fair competition and achievement of state clean energy goals and policies. However, if FERC maintains a hard line on BSM rules, New York State may be forced to consider taking on more responsibility for resource adequacy in the state. NYS should develop a clear threshold for when it will take steps to assume this responsibility. For example, one key threshold for New York State to consider is that the state's preferred resources, which will be deployed to meet the Clean Energy Standard, should be able to fully count toward (and be compensated for) their contributions to resource adequacy. This will ensure that utility customers will not have to pay for additional, unnecessary capacity. This minimum threshold criterion should be applied not just with respect to how FERC addresses BSM in the NYISO, but more generally, since BSM is not the only issue affecting participation of the state's preferred resources in wholesale markets.

New York Should Start to Consider the Implications of Assuming Greater Responsibility for Resource Adequacy Now

While the future of BSM in FERC-jurisdictional wholesale markets is being determined, NYS should prepare for the possibility that it may need to assume greater responsibility for resource adequacy. We do not recommend that the State take over resource adequacy immediately, but that it should do so only when its threshold criteria, as discussed above, have been met. This may take some time as parties will seek to clarify FERC's PJM MOPR Order, revise it, and potentially overturn it. And there is a chance that FERC, with different commissioners, might decide differently in the future. However, New York should prepare for the possibility that the policy preferences expressed by FERC in the PJM MOPR Order could be applied to the NYISO as well, and could be long-standing. If New York decides to assume greater responsibility for resource adequacy, it should already have in place a fully-vetted plan to do so. The State should start now to make sure that it considers all of the implications of such a decision and that it is prepared.

An initial step would be to charge a stakeholder group to work on the issue of resource adequacy and BSM. Like the stakeholder group that worked on Carbon pricing, this could be a joint effort of the NYPSC and the NYISO. The NYPSC could put time limits on the group with clear deliverables. This group would produce the concepts that either NYISO or the NYPSC could use to ensure reliability and compliance with NYS clean energy goals.

There are many methods the state could employ to ensure resource adequacy; however, we strongly believe that it should rely on competitive and transparent market mechanisms, such as auctions. The difficult process of defining and refining these market mechanisms is best accomplished through in-person

stakeholder meetings followed by several opportunities for written comment. We recommend that the NYPSC begin to formulate how it would organize such stakeholder efforts and initiate them in the near future.

While we do not propose any specific mechanism within these comments, we believe establishing guiding principles will benefit the process. The principles we provided in our initial comments could serve as a starting point. They are explained in more detail in our initial comments,¹⁹ and they are summarized below:

1. **Maintain New York’s high level of reliability.** With the express assent of Congress²⁰ and in recognition of the unique needs of the City of New York, NYS has adopted and maintained higher reliability standards than required in other jurisdictions. This should not change, regardless of who ultimately has responsibility for resource adequacy. The state should continue to support and expand the unique programs that have utilized advanced energy to meet its heightened reliability standards.
2. **Ensure achievement of state goals adopted in the CLCPA.** Any changes to NYISO’s markets or new mechanisms established by the state must be compatible with and in service of achieving a 100% clean electricity system by 2040.
3. **Enable all resources to compete and participate.** All resources should be able to compete on a technology-neutral basis to provide energy, resource adequacy, ancillary services, and any other benefits or services based on their price (inclusive of carbon emissions costs) and technical capabilities.
4. **Allow resources to deliver their full value to ratepayers and do not mitigate payments for attributes or services *not* valued within the wholesale markets.** The offers of resources with attributes that meet state policy objectives, where such attributes are not valued in NYISO markets, should not be administratively repriced in a manner that raises customer costs and risks such resources not clearing the ICAP market. Policies that do so, such as BSM, inefficiently raise the capacity price above the efficient level or over-procure redundant resources, and thus raise costs to customers.
5. **Adjust to the different resource mix of the future.** NYS should identify and plan for the suite of products and services (including additional transmission infrastructure) that may be needed to maintain the reliability and resilience of the electricity system as the resource mix changes to

¹⁹ Initial Comments at 9

²⁰ See, e.g., 16 U.S.C. 824(i)(3) (“[T]he State of New York may establish rules that result in greater reliability within that State”).

reflect state policies (*i.e.*, as it transitions to a system that has higher penetration of DERs, energy storage, and variable renewable resources, along with higher overall demand due to electrification of buildings and vehicles). Additionally, we continue to support competitive as well as traditionally regulated transmission solutions under the NYISO and PSC’s Public Policy Transmission Needs (“PPTN”) processes in order to enable new clean energy generation to be interconnected safely, reliably and in a manner consistent with the State’s resource adequacy needs. New York State will not meet its goals under CLCPA without additional expansion and upgrade of its bulk transmission network. We strongly encourage the PSC to carefully consider current and future PPTN matters before it that will remove hurdles to the participation of non-incumbent utility companies also in developing new transmission projects in New York to accomplish the CLCPA goals, and not limit itself to transmission development solely from incumbent utilities.

6. **Ensure that market constructs and state policies provide pathways for needed resources to be financed, without inefficiently prolonging the life of resources no longer needed.** Any future market construct must improve opportunities for new entrants into the market and ensure that any major changes to existing resource adequacy mechanisms retain these opportunities. At the same time, it is important to avoid solutions that result in over-compensating resources that are no longer needed or that are expected to have short useful lives given the CLCPA mandate to decarbonize the power sector by 2040.
7. **Ensure that the roles of state regulators and the wholesale market operator (and by extension federal regulators) are clearly defined.** The PSC and NYISO should, in any revised construct, clarify and define the roles of state regulators and the wholesale market operator (and by extension federal regulators overseeing the wholesale market) in ensuring resource adequacy and procuring resources. This is a crucial centerpiece of effectively bridging state policies and the wholesale markets; failure to clearly define these roles has caused or exacerbated conflict in other regions.

Conclusion

AEE Institute, ACE NY, AWEA, and SEIA appreciate the Commission’s initiative and leadership on the important question of aligning resource adequacy mechanisms with clean energy goals. The recent order from FERC has underscored the need for this proceeding, and we urge the Commission to, as a first-best option, continue to explore opportunities to reform the NYISO markets to better align them with New York’s policy goals, through mechanisms including but not limited to carbon pricing and reforms to the

ICAP market. At the same time, the Commission should begin exploring what steps may be necessary for the state to increase its role in ensuring resource adequacy should it become necessary, as well as the implications of doing so. We look forward to our continued participation in this important proceeding.