



S.737 (Parker)

Memorandum in Strong Opposition

May 12, 2023

S.737 (Parker) - AN ACT to amend the public service law and the labor law, in relation to providing net revenues from utility-owned large-scale renewable generation projects to low-income customers and authorizes utility companies to own such projects

We strongly oppose S.737 (Parker). This bill would allow utility ownership of renewable generation, such as wind and solar, in contravention of over 25 years of New York State energy policy that shields electricity ratepayers from the risk of project development. Re-exposing ratepayers to this risk is not in the public interest, especially given already rising energy costs.

Con Edison had proposed to develop and own solar projects within its rate case plan to the New York State Public Service Commission (PSC). As part of the settlement process to address Con Edison's proposal, the company withdrew its intention to develop 1,000 MW of solar. Con Edison also proposed to own four battery storage projects connected to its distribution level substations, and, then, the company agreed to settle and instead would develop only two of the four battery storage projects. If approved by the PSC, Con Edison would receive an astounding levelized 19.8 percent increase in electric delivery revenues and an even more astonishing levelized 31.3 percent increase in gas delivery revenues over the three-year term of the rate plan.

Similarly, New York State Electric and Gas is seeking a 16.8 percent increase in revenues, and Rochester Gas and Electric has proposed a rate hike of around 15 percent on average by next year. The two companies also proposed to own solar generation to provide Clean Energy Credits to low-income customers, similar to Con Edison's program, in their pending electric rate cases, and settlement negotiations are ongoing in those cases.

In response, Governor Kathy Hochul has stated that it is “outrageous and unacceptable that utility companies are proposing the largest rate increase in recent history...”, and she urged the PSC to “protect New York families from unjustified and unfair rate increases... when so many families are struggling because of global economic headwinds and nationwide inflation...”

Furthermore, the PSC is conducting a proceeding (Case 22-M-0149) to explore how to meet the targets of the Climate Leadership and Community Protection Act (CLCPA) and is considering comments it received as to whether allowing utilities to develop and own renewable energy projects is in the public interest. The Legislature wisely tasked state agencies and public authorities to implement the mandates in the CLCPA, and it would be contrary to that intent and directive for this legislation to pre-empt the PSC’s decision-making process in this case.

Moreover, having utilities build renewable energy projects and then charge the full cost to ratepayers will not help achieve the CLCPA’s targets any faster or cheaper, partly because utilities cannot get through the Renewable Energy Siting Law (Executive Law Section 94-c) process any quicker than private independent power producers (IPP), as everyone needs to follow the same requirements for environmental review.

Additionally, it is unwise to let utilities, which already own the wires delivering the electricity, to develop renewable projects. Utilities would then sell the power to themselves and have an incentive to give themselves preference when deciding which interconnection request to process first or how much to charge for an interconnection request. This self-dealing would disadvantage non-utility-owned renewable energy generation and ultimately consumers.

The PSC’s determination that IPP companies can build and operate generation more efficiently than utilities was one of the main reasons the PSC decided to restructure the electric utility industry in New York over two decades ago. Consistent with this policy, the PSC barred the State’s monopoly utilities from constructing and owning renewable and other generation because of the potential that such ownership would inhibit entry by private market participants, which could result in less competition and higher costs to consumers in the long run. The PSC ruled that a utility should only own distributed energy resources if no one in the competitive market is providing the solution, which is definitely not the case in New York where private market participants are developing projects in record numbers and have made New York a national leader in renewable energy development.

For instance, IPP investors provided a vigorous response to Requests for Proposals (RFPs) issued by the New York State Energy Research and Development Authority (NYSERDA) under the Clean Energy Standard (CES). More than 120 renewable energy projects (some of which include energy storage), totaling more than 12,000 MW, have received awards under NYSERDA’s procurements, and there is 6,428 MW of renewable capacity currently installed.

These CES RFPs are for the purchase of renewable energy credits (RECs). Ratepayer support for buying RECs is only a proportion of overall project development costs, and the rest are covered by payments from the competitive wholesale electricity market. In contrast, utilities would charge **all** project development costs to ratepayers. Utilities have a lower cost of capital than IPPs largely because of guaranteed revenues that would have ratepayers cover cost overruns. Cost overruns have been a pattern for prior monopoly utility construction projects that were passed through to captive ratepayers. In the case of privately-owned renewable generation projects, the investors bear the risk of cost overruns and loss, not consumers.

Under the bill, utilities would issue RFPs to third parties to build the facilities. Utilities have proposed this “build-transfer” mechanism in the past, but the PSC has not approved that approach.

Also, the legislation proposes that net revenues from the utility facilities would be provided to low-income customers in the form of bill credits. However, many utilities currently have an immense backlog of community solar bill credits, with tens of thousands of New Yorkers not receiving their bill credits from utilities in a timely fashion under existing programs. Community solar is an approved and tested mechanism for serving low-to-moderate income customers and Disadvantaged Communities, yet this program is currently being undermined by the utilities' failure/refusal to issue bill credits as required through this program. Rather than giving utilities more responsibility for serving New York's Disadvantaged Communities and meeting the State's equity goals, utilities should be obligated to fix their current inefficiencies in serving these communities through existing programs.

In addition, last year's enacted State Budget provides \$250 million for a PSC Utility Arrears Relief Program to reduce gas and electric utilities' arrears for residential customers of the utilities, municipal electric systems, and the Long Island Power Authority. Arrears will be reduced through an arrears management plan, or placing arrears on a deferred payment agreement, and through the PSC's Energy Affordability Policy Program, the Home Energy Assistance Program, Regular Arrears Supplement Program, and the Emergency Rental Assistance Program.

The bill sends the wrong investment signal to IPP developers of renewable energy projects at exactly the wrong time when the State is working to meet the CLCPA's targets to dramatically increase its renewable supply and is seeking private sector investment to meet those goals. If enacted into law, the bill would have the immediate impact of chilling private sector energy investment in this State and costing ratepayers even more of their hard-earned money than the utilities are already proposing to take.

For the reasons stated above, we strongly oppose S.737 (Parker).

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

Advanced Energy United educates, engages, and advocates for policies that allow our member companies to compete to repower our economy with 100% clean energy. We work with decision makers at every level of government as well as regulators of energy markets to achieve this goal. The businesses we represent are lowering consumer costs, creating millions of new jobs, and providing the full range of clean, efficient, and reliable energy and transportation solutions. Today, these businesses have a combined market capitalization in excess of \$3 trillion. Together, we are united in our mission to accelerate the transition to 100% clean energy in the United States.

The Independent Power Producers of New York, Inc. (IPPNY) is New York's premiere trade association dedicated to representing the largest fleet of clean energy generators in New York State and companies involved in: the competitive power supply industry; the development of electric generating facilities; the generation, sale, and marketing of electric power; and natural gas transmission facilities. IPPNY Member companies produce the majority of New York's electricity, utilizing all sources such as wind, solar, hydro, energy storage, natural gas, low sulfur oil, waste-to-energy, biomass, and nuclear.

The New York Offshore Wind Alliance (NYOWA) is a collaboration between the world's leading developers of offshore wind, environmental organizations, labor and academia joined together to support the development of a robust and responsible offshore wind market in New York State. Founded in 2016 as an initiative of the Alliance for Clean Energy New York, NYOWA provides advocacy, analysis, education and outreach in support of New York State's nation-leading goal of 9,000 MW of offshore wind development by 2035.

NYSEIA is a not-for-profit industry trade association with a mission to advance and accelerate the deployment of distributed solar energy and energy storage in New York State. We proudly represent hundreds of distributed solar and storage businesses on key legislative, regulatory, and statutory policy matters affecting these industries. Our membership is primarily comprised of local, regional and national firms that develop and install distributed solar energy and battery storage systems across New York State. Our members are working every day to help achieve the ambitious clean energy and equity goals outlined in the Climate Leadership and Communities Protection Act.

The Solar Energy Industries Association® (SEIA) is leading the transformation to a clean energy economy, creating the framework for solar to achieve 30% of U.S. electricity generation by 2030. SEIA works with its 1,000 member companies and other strategic partners to fight for policies that create jobs in every community and shape fair market rules that promote competition and the growth of reliable, low-cost solar power. Founded in 1974, SEIA is the national trade association for the solar and solar + storage industries, building a comprehensive vision for the Solar+ Decade through research, education and advocacy.

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