BEFORE THE NEW YORK PUBLIC SERVICE COMMISSION

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 22-M-0149**

COMMENTS OF NRG ENERGY, INC.

I. INTRODUCTION

On May 12, 2022, the New York Public Service Commission ("Commission") issued a Notice Seeking Public Comments[1] ("Notice") in the instant proceeding concerning the ownership of distributed energy resources ("DERs") and large-scale renewable electric generation assets by the state's utilities. NRG Energy, Inc. ("NRG") provides the following comments and recommendations to assist the Commission in formulating an effective approach to these issues.

A. WHO WE ARE

NRG is a leading integrated energy and home services company in North America. A Fortune 500 company, NRG is at the forefront of changing how people use, buy, and think about energy. NRG strives to empower our residential, commercial, and industrial customers with reliable and cost-effective energy solutions. We draw on our deep industry experience to provide products and services that suit our customer's needs with the consistency and innovation expected from the nation's leading integrated

[1] Case 22-M-0149, *Proceeding on Motion of the Commission Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act*, Notice Seeking Public Comments.

energy and home services provider. NRG has numerous licensed Energy Service Companies that are actively serving electricity and natural gas customers throughout New York and also participates in utility administered demand response programs in New York with an office in Buffalo, New York. NRG also serves customers in 24 other states across the United States. It maintains one of the largest combined competitive retail energy portfolios in the U.S. with 157 TWhs of electricity and 1,877 MMDth of natural gas sold in 2021 and approximately six (6) million customers served. NRG provides a range of products and services including demand response and energy efficiency, 100% renewable energy, energy plans bundled with energy efficiency technology, Nest thermostats, as well as loyalty rewards and charitable giving products through "Choose to Give" plans. In sum, NRG is creating a sustainable energy future by fostering smarter energy choices and providing reliable, cleaner power.

B. SUMMARY OF POSITION

In its Notice, the Commission seeks feedback on a series of questions focused on the issue of utility ownership of DERs and large-scale renewable electric generation assets. Strong empirical evidence exists that demonstrates competition to add new power generation to the market has resulted in a lower cost of capital and return requirement within the market for competitive investments in generation than exists under the Commission's ratemaking methodologies. This is not NRG's opinion, but that of the Independent Market Monitor tasked with overseeing the New York Independent System Operator ("NYISO"). Renewable investments are capital intensive—they have no fuel costs—and the lower cost of capital must be one of the two most influential variables in any discussion of cost-effective decarbonization, the other being the assignment of operational risk. These risks belong to the project developer and owner in the case of a genuinely competitive market where generators vie against one another for the business of consumers. Meanwhile, ownership by a public power entity inexorably means sinking such risks to a captive base of customers. Therefore, investor-owned utilities in effect bear hardly any meaningful risk of project development and ownership. In short, there is no evidence to suggest

utility ownership of renewable projects or DERs will lower the cost and risk to consumers of New York's laudable decarbonization pathway.

The Commission's existing policies, in effect for the past two decades, have appropriately recognized that private companies with capital-at-risk have incentives to build efficient and reliable resources, that private investors should bear the risk of owning and operating generation assets, and that generation should be separate from transmission and distribution in order to minimize any potential exercise of vertical market power by New York's utilities. These long-standing policies have been an effective tool to attract private capital, deploy needed and diverse generation in the state, and lower consumer costs. NRG strongly believes a departure from these policies will hinder the State's progress to meeting the goals of the Climate Leadership and Community Protect Act ("CLCPA"), frustrate participation by other market participants in New York's electricity markets, stifle necessary innovation, and, ultimately, harm New York's consumers.

II. COMMENTS

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

The Commission should not modify its current policy on vertical market power. In Opinion 96-12,[2] the Commission identified vertical power concerns with utility ownership of generation assets. The Commission required separation of generation from transmission and distribution systems to prevent concentration of market power and to avoid anti-competitive behavior. The Commission concluded that the ownership of generation by a utility would unacceptably exacerbate the potential for market power and that total divestiture of generation was a clear way to mitigate it.

Competitive owners of renewables, DERs, and other power resources must stake their own capital at risk. They will be less willing or altogether unwilling to do so if they face a persistently unlevel playing field where their competition is a rate-regulated utility with the ability to recover all of its costs,

[2] Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, May 20, 1996.

even on uneconomic transactions. As such, the Commission here faces the choice not so much whether to allow utilities to own renewable generation, as it does the choice whether to re-create an ecosystem that is not conducive to investment in renewables by actors *other than* a utility. It simply will not be reasonable for merchant developers to be expected to face a disadvantageous landscape of risk and returns when regulated utilities may make investments into rate base at a return higher than the typical market rate of return, as discussed below. This crowding-out effect is exactly the opposite of what should be pursued in an era that calls for large-scale and rapid investment in clean energy and especially in an era where New York is trying to meet the goals of the CLCPA.

NRG supports the Commission's long-standing position prohibiting New York utilities from developing, owning, and operating renewable generation and DERs. The underlying principles the Commission relied upon to establish these policies have not changed; therefore, the Commission should not modify its current policy. Maintaining these policies will continue to be the most effective way to curb vertical market power concerns arising from utility owned generation and support the advancement of the goals of the CLCPA.

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

The Commission should not modify its current policy on utility ownership of DER assets. In the REV Order Adopting Regulatory Policy Framework and Implementation Plan,[3] the Commission ruled that utility ownership of energy storage, as with all DER, should be limited to certain defined situations, such as where the storage was integral to utility distribution system operations and reliability, where market participants were unwilling to address the need and no market solution was available, and in REV Demonstration Projects. In the Commission's Storage Order Establishing Energy Storage Goal and Deployment Policy, the Commission reiterated its position that limitations on utility ownership of energy storage should be maintained.[4]

[3] Case 14-M-0101, *Order Adopting Regulatory Policy Framework and Implementation Plan*, February 26, 2015.

[4] Case 18-E-0130*, Order Establishing Energy Storage Goal and Deployment Policy,* December 13, 2018.

Departure from the policies that limit utility ownership of renewable assets and DERs would undermine the current successful model which relies on independent non-utility entities to develop renewable energy and DER resources to meet the goals of the CLCPA. Developers of renewable generation and DER assets have proactively responded to make significant investments in New York today. This is demonstrated by the multitude of NYSERDA solicitations and subsequent agreements that have supported the development of over 8,500 MW of renewable projects since 2017.[5] More than 3,500 MW of distributed solar capacity[6] have been acquired and/or deployed in New York via the NY-Sun public-private partnership program administered by NYSERDA. There are approximately 4,300 MW of offshore wind[7] under active development by private companies in New York which have been procured via competitive solicitations run by NYSERDA. Clearly, the facts above demonstrate that market and private capital are responding to the efforts to deploy renewables and DERs in New York.[8]

NRG supports maintaining the Commission's limitations on New York utilities' ownership of DER assets. The underlying principles the Commission relied upon to establish these policies and

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[5] *See 2017 Solicitation*, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2017-Solicitation;

2018 Solicitation, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/RFP-Resources;

2019 Solicitation, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2019-Solicitation-Resources;

2020 Solicitation, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2020-Solicitation-Resources;

2021 Solicitation, *available at* https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts/2021-Solicitation-Resources.

[6] NYSERDA Clean Energy Dashboard, https://www.nyserda.ny.gov/Researchers-and-Policymakers/Clean-Energy-Dashboard/View-the-Dashboard.

[7] NYSERDA Offshore Wind Projects, https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/NY-Offshore-Wind-Projects.

[8] Further to this point, NYSERDA recently confirmed its expectation that New York State "is on track to exceed the [CLCPA's] mandate of 70 percent renewable power by 2030." *See* Testimony of New York State Energy Research and Development Authority (NYSERDA). Submitted to Assembly Standing Committee on Corporations, Authorities, and Commissions, *et al*. July 28, 2022.

support market-based investment to serve New York customers' energy needs have not changed. Maintaining the existing policy will continue to be the most effective way to encourage investment in New York DER, enhance opportunities for innovation, and support the goals of the CLCPA.

iii. 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.

NRG does not believe there are material advantages to utility ownership of electric generation assets. As discussed more fully below, there are, in fact, significant disadvantages to utility ownership. The Commission should instead focus its efforts on ways in which to enhance the engagement of competitive, independent, and non-utility based electric generation asset investments in New York.

iv. 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.

There are many significant disadvantages to utility ownership of DER and renewable generation resources. *First*, it will raise costs for consumers. Clean energy resources, typically having no fuel costs, are instead capital intensive. The cost of capital to construct clean energy resources is a highly influential variable to their overall economics. Another variable is the risk of the power resource's operation and overall viability in the market. With respect to both variables, utilities—whether publicly owned, or owned by investors and subject to cost-of-service regulation—fall short relative to competitive deployment of clean energy. The New York Independent Market Monitor's 2021 Annual Report of NYISO demonstrates that the after-tax annual return of new, competitively sourced offshore wind and solar generation between 2019 and 2021 fell substantially *below* the authorized weighted average cost of capital of regulated utilities.[9] Had utilities and not private investors owned this generation, consumers would have been charged higher rates associated with a regulated return on capital investment.

It is notable that even though expectations of a merchant cost of capital may be higher than what a regulated utility is authorized to earn, it is competition that endogenously determines the amount of

[9] Potomac Economics, *2021 State of the Market Report for the New York ISO Markets*. (May 2022). p. 18.

profit and the level of risk premium, if any, merchant investors seek to embed in their supply offers. This is precisely what has been observed in the NYISO in the past three years for offshore wind and solar, where actual returns were more than 100 basis points below authorized utility returns.[10]

In addition to this direct evidence of a lower effective cost of capital for major renewable projects through competitive, merchant ownership, research has recently modeled the cost of capital requirements as an output function in a simulated market assumed to have a high penetration of renewable energy, with conclusions that the cost of capital for offshore wind, onshore wind, solar, and storage projects ranges between 5.0 and 6.6 percent.[11] By comparison, the Commission has authorized for Con Edison a weighted average cost of capital at just beyond the highest end of this range, at 6.61 percent.[12] This higher-than-market cost of capital is *despite* the fact that a regulated utility may avail itself of cost-of-service regulation that grants extraordinary protections from operational risks.

This *second* important benefit of competitive markets is how the financial and performance risk of capital investments are borne: by ratepayers or by owners and operators? Simply put, investor-owned utilities have an incentive structure that does not drive them to minimize costs—but instead to spend more capital than may be necessary to capture the greater than typical market rate of return described above. Meanwhile, once those investments are made, little consequence faces utility owners if a project underperforms operationally. NRG has not quantified what kind of risk premium would result naturally from merchant developers' shouldering the risk of a clean energy project's upfront capital costs and ongoing operational risks, but from our long experience, we suggest it is substantial.

Third, allowing utility ownership of DERs and renewable generation assets will negatively crowd out and disincentivize private companies from deploying DERs and renewables. Competitive firms have a choice to invest in New York—or elsewhere. To date, the state has been an encouraging place to make

[10] *Ibid*.
[11] Mays, J. (Cornell) and Jenkins, J. (Princeton), "Electricity Markets under Deep Decarbonization" (April 2022). USAEE Working Paper No. 22-550. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4087528
[12] ConEd has since requested in its latest rate case a still-higher return, at a weighted average cost of capital of 7.14 percent. Dkt. C-22-E-0064. Previously authorized by the Commission (Jan. 16, 2020) in Dkt. C-19-E-0065.

renewable and clean energy investments, with more than $20 billion in capital invested in the state's decarbonization through existing, competitive channels.[13] Allowing a cost-of-service-regulated monopoly to enter the space that is presently constituted as a competition between generators who must stake their capital at risk inevitably will crowd out the competitive deployment of capital. New York cannot reasonably expect to have a competition between two opposite, conflicting business models, and it should choose the one that has had demonstrable success to date.

Further supporting this conclusion, in July 2022, NYISO's interconnection queue reported more than 50,000 MWs of proposed projects like large-scale solar, on-shore and off-shore wind, energy storage systems, and co-located energy storage and renewable assets projects. The robust NYISO interconnection queue demonstrates an abundance of private capital developing renewable generation in New York. Moreover, there is no concern about vertical market power under NYSERDA procurement as it receives many bids from non-regulated and non-affiliated entities.

Fourth, New York's utilities have not built significant DER and renewable generation resources for almost two decades while private companies have been successful in building and operating within that same period.[14] Moreover, private companies can build DER and renewable generation resources more quickly than utilities can build DER and renewable generation resources since the proposed projects, regardless of owner, still need to go through all required environmental, siting, and interconnection reviews. Further, the Commission's policies on vertical market power protect DER and renewable interests and their investors in the interconnection process from unfavorable treatment relative to what could be similarly situated projects of the utilities. The utility is responsible for interconnection studies, the scope of interconnection studies and how long it would take to perform interconnection studies. Maintaining that long-standing separation of duties will ensure that private investment competes

[13] https://climate.ny.gov/Our-Progress.
[14] For example, the New York Power Authority relies upon "private sector partners for implementation" of renewable energy projects. *See* Prepared Testimony of Justin E. Driscoll, Interim President and Chief Executive Officer of the New York Power Authority. Submitted to Assembly Standing Committee on Corporations, Authorities, and Commissions, *et al*. July 28, 2022.

on a level-playing to the benefit of New York customers.

III. CONCLUSION

Burdening New York's utilities with ownership of renewable and DER resources will not significantly advance the State's renewable energy goals under CLCPA. If utilities were allowed to own DER resources and renewable generation, the probable result will be fewer proposed projects offered to NYSERDA and NYISO by competitive and private investors. At best, this is a zero-sum game with all of the concomitant issues of vertical market power, consumer risks, and slower innovation noted above. It would not add significantly to the new capacity of renewables and DERs built across New York. Even if projects were developed by third parties and sold to the utilities via a competitive procurement process, utilities would still raise needed capital from its captive ratepayers and operate the projects in a regulated framework and, therefore, could not achieve maximum efficiency in operation. In this case, the utilities' captive ratepayers would be caught paying for the uneconomic investment for the full life of the project. Utility ownership will neither expand nor accelerate expansion of renewable generation and DERs in New York, but rather reassign the costs and risks away from investors and toward consumers.

For the aforementioned reasons, there is no convincing evidence or policy rationale supporting utility ownership of DERs or renewable generation resources. Utilities have a significant role in helping New York achieve the goals of the CLCPA, and should focus on issues that are under their purview, such as owning and operating transmission and distribution systems, facilitating DER and renewable generation resource interconnection and deployment, and engaging demand side resources.

NRG appreciates the opportunity to comment regarding the Utility ownership of DERs and large-scale renewable electric generation assets in New York and thanks the Commission for consideration of the comments made herein.

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