

February 20, 2024

VIA ELECTRONIC MAIL

Hon. Michelle L. Phillips, Secretary

New York State Public Service Commission 3 Empire State Plaza

Albany, New York 12223-1350 [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

Re: CASE 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard.

NOTICE SEEKING FURTHER COMMENT

Dear Secretary Phillips:

Advanced Energy United (“United”) and the Alliance for Clean Energy New York (“ACE NY”) submit for filing the attached comments in response to the *Notice Seeking Further Comment*, Issued October 20, 2023, in the above referenced proceeding.

Respectfully submitted,

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State of New York Public Service Commission

In the Proceeding on Motion of the Commission to Implement

A Large-Scale Renewable Program and a Clean Energy Standard Case 15-E-0302

Comments on the Notice Seeking Further Comment

INTRODUCTION AND BACKGROUND

Advanced Energy United (“United”) and the Alliance for Clean Energy New York (“ACE NY”) submit these joint comments in response to the October 20, 2023, *Notice Seeking Further Comment* (“Notice”) in the above captioned proceeding*.*

On May 18, 2023, the Commission issued the *Order* *Initiating Process Regarding Zero Emissions Target (*“Order”), in proceeding 15-E-0302, which posed specific questions and solicited responses on the topic of defining the term “zero emissions” for the purposes of implementing New York’s 2019 landmark Climate Leadership and Community Protection Act (“CLCPA”, “Climate Act” or “Act”). In the January 17, 2024, *Notice Extending Comment Period* issued by the Commission in this same proceeding, the comment period relating to the above Notice was extended to February 20, 2024.

Our two organizations, United and ACE NY, are together submitting these comments in response to the Notice, in which we address the six specific questions posed by the Commission Staff (“Staff”) in the Notice and also provide relevant contextual information and legal rationales concerning decision-making on this matter.

Advanced Energy United is a national association of businesses that 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 electric vehicles, energy efficiency, demand response, energy storage, solar, wind, hydro, nuclear, and smart grid technologies. United represents more than 100 companies in the $374 billion U.S. advanced energy industry, which employs 3.2 million U.S. workers, including 157,000 individuals in the Empire State.

The Alliance for Clean Energy New York 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 this mission.

In these comments, United and ACE NY are referred to as “we”, “our organizations” and the “clean energy industry.”

In our initially-submitted comments on August 16, 2023, Case 15-E-0302, Joint Comments of Advanced Energy United and the Alliance for Clean Energy New York, Submitted on August 16, 2023[[1]](#footnote-2) our organizations highlighted the critical need to primarily focus in the near-term on development of renewable energy projects – wind, solar, offshore wind, hydroelectric – plus energy storage, transmission upgrades, and behind-the-meter clean resources, including demand response (DR) to first achieve the 70% renewable electricity by 2030 mandate in New York’s climate law. Successful achievement of this milestone needs to be the foundation for subsequent achievement of a 100% emissions-free grid by 2040.

Our comments then suggested that certain technologies that clearly and demonstrably produce no emissions during electricity generation be designated as emissions-free by the New York Public Service Commission (“Commission”) in a first phase.[[2]](#footnote-3) This would include, for example, grid-scale and behind-the-meter zero emission renewable technologies, existing nuclear plants, energy storage, and DR. It should also include controllable transmission lines paired with portfolios of renewable energy systems and energy storage.

Then, we suggested a second phase in which the Commission establishes criteria that would be used to designate other technologies as emissions-free and establishes an ongoing process for the Commission to evaluate technologies that come forward and request this designation over time.[[3]](#footnote-4) In this way, emerging innovative technologies can seek this designation as they are commercialized.

In our responses to the current Notice requesting further feedback to additional Questions 1 through 6, our organizations highlight the role of positive approaches in achieving a 100% emissions-free grid, from increasing transfer capability with neighboring balancing authorities to the range of clean distributed energy resources (“DERs”), to long-duration storage and grid-enhancing technologies (“GETs”). Our aim is to highlight that New York can scale up the range of its existing programs that support these technologies and approaches, separate and apart from an entirely new program to support non-renewable generating facilities that may be and/or may become zero-emission. Also, we point out that the deployment of new zero-emissions flexible resources should be supported by market participation rules and new market products, developed in coordination with the NYISO.

RESPONSES TO QUESTIONS POSED BY STAFF

QUESTION 1 - *PSL §66-p does not expressly indicate whether “zero emissions” refers to greenhouse gas emissions only, or greenhouse gases and also the “co-pollutants” referred to elsewhere in the CLCPA. Commenters offered different interpretations. Staff asks for further comment on this issue. Does the CLCPA, the PSL, and other relevant sources of authority argue for reading “emissions” in the term “zero emissions” as encompassing all air pollutants, greenhouse gas emissions only, or some other subset of air pollutants?*

**ANSWER TO QUESTION 1**: Notably the Climate Law does not state “zero emissions of greenhouse gases (GHG)”. However, at a minimum the definition of Zero Emissions should cover greenhouse gases including carbon dioxide, methane, and nitrous oxide. As explained further in these comments, this minimum specification complies with both the letter and spirit of the CLCPA, which has the goal of reducing emissions overall, including GHGs as well as all other emissions that are harmful to people and the environment.

That said, defining the term “zero emissions” within the context of the CLCPA can be challenging due to the absence of an explicit definition in the Act and subsequent regulations. The plain meaning of the term zero emissions implies the complete absence of emissions encompassing all air pollutants, including greenhouse gases, particulate matter, and volatile organic compounds. Such an interpretation aligns with the statutory mandates of addressing climate change and promoting public health. While legal coherence requires precision in statutory language, the absence of a statutory definition allows for some flexibility in interpretation by considering legislative intent, statutory context, and relevant case law, so that policymakers can develop a nuanced understanding of zero emissions within the CLCPA framework while staying true to the letter and spirit of the CLCPA. Nevertheless, we see no reason for any entity interpreting and/or defining the term zero emissions to go out of the way to create large exceptions in its definition. Specifically, the CLCPA is devoid of any large exceptions to its emission reduction mandates. Quite the opposite, the CLCPA very clearly mandates that the time is now to reduce GHGs and other emissions that are harmful to human health and the environment. After reading through the CLCPA, it strains credulity to try and take the opposite approach of attempting to find a way to allow for more GHGs emissions or more emissions of any known harmful pollutants. Therefore, there should not be large exceptions in defining this important term and answering the 6 questions posed by Staff.

QUESTION 2 - *Multiple commenters discussed the relationship between the term “zero emissions” and the term “net zero emissions,” which appears elsewhere in the CLCPA but not in provisions to be codified in the PSL. Staff asks whether the Commission must read these terms as distinct, and if so, how the Commission should characterize and apply the distinction between them.*

**ANSWER TO QUESTION 2:** On their face, these are two distinct terms and they should be read as distinct, noting that “zero emissions” means no emissions and “net zero emissions” means no emissions after accounting for any allowable emissions sinks, such as any carbon captured before or after combustion. Since they are distinct terms, we assert that “zero emissions” should be applicable to the actual direct emissions from a particular source or activity. Net zero emissions should also be its own legal term that is distinct from the “Zero Emissions” legal definition. Once the definition of Net Zero Emissions is established, that definition needs to be further broken down and distinguished between direct emissions and emission “sinks” (processes that absorb or sequester carbon) and may also allow for the purchase of emissions offsets to meet targets that are defined in terms of Net Emissions. Such offsets should not be allowed in cases where targets are clearly defined in terms of actual emissions prescribed by the Public Service Law and/or any other regulatory agency that governs the emissions that are being defined, such as by the New York State Department of Environmental Conservation (DEC).

Another consideration that needs to be made is whether we are looking at a single conversion process or sector, or the economy as a whole. The concept of net zero emissions is particularly useful when looking economy-wide (multiple sectors), and the CLCPA targets for the economy are indeed about achieving “net” emissions reductions (85%). However, if looking at a specific conversion process or sector, “zero emissions” is the more relevant metric, and here too, the CLCPA is clear in that the power sector has to be zero emissions with no offsets. This differs from, say, biomass-based conversion processes which emit carbon dioxide (CO2), but where that CO2 can be absorbed by growing back an equivalent amount of biomass, which could be considered “net zero” emissions.

Distinguishing between zero emissions and net zero emissions within the CLCPA framework poses legal complexities. While both terms share a common objective of emissions reduction, their legal and regulatory implications differ significantly. Zero emissions implies an absolute absence of emissions while net zero emissions allows for the offsetting of emissions through various mechanisms, such as planting trees to offset the emissions generated in producing the electricity. The distinction between the two terms is critical in shaping regulatory frameworks and enforcement mechanisms. The eventual legal definition of these two terms requires consideration of statutory language, legislative history, and administrative guidance. This is also in keeping with the letter and the spirit of the CLCPA which does not expressly define either term, even though the legislature could have provided definitions. Therefore, textual analysis suggests that zero emissions implies more of an absolute standard, while net zero emissions allow for more flexibility in emissions reduction strategies and processes.

QUESTION 3 - *The Commission’s Initiating Order notes that the Department of Environmental Conservation (DEC), pursuant to regulations it adopted at 6 NYCRR pt. 496 under the Environmental Conservation Law as amended by the CLCPA, has counted the emissions arising from the combustion of biomass for electricity generation on a gross rather than a net basis. Staff asks for further comment on whether DEC’s emissions accounting regulations constrain or otherwise inform the Commission’s definition of the phrase, “by the year [2040] the statewide electrical demand system will be zero emissions.”*

**ANSWER TO QUESTION 3:** The CLCPA does not define biomass as renewable, which could have been done if that was the intent of the New York State Legislature. Additionally, the above phrase “by the year [2040] the statewide electric demand system will be zero emissions” remains clear, noting that it does not indicate “net zero emissions”. Additionally, it is not equivocal as to whether the “statewide electrical demand system” applies to the definition of zero emissions. The quoted text above makes it clear that the statewide electrical demand system will be zero emissions by 2040, so any hesitancy in applying zero emissions to the electric grid, either transmission or distribution, seems misplaced. While DEC's regulations provide valuable guidance on emissions accounting methodologies, they must align with the CLCPA’s objectives to achieve its overarching goals of emissions reduction, and not create a large loophole that excludes any large sector that is known for emitting large amounts of GHGs and other emissions that are harmful to the public and the environment, like the electricity sector.

QUESTION 4 *- Defining an emissions limit requires specifying, among other things, which elements of the lifecycle of a given emissions source are to be counted, and the threshold level above which emissions from that source are impermissible or disqualifying. Staff seeks comments on what discretion the CLCPA leaves for the Commission when it specifies each of these parameters.*

**ANSWER TO QUESTION 4:** The CLCPA is clear in that zero emissions are not the same as net zero emissions which includes the emissions from electricity generation. We fully understand that legal interpretation of these parameters necessitates consideration of scientific evidence and technological advancements. These parameters, now residing with regulatory agencies that are obligated to develop enforceable regulations that facilitate effective emissions reduction but must still ensure compliance with the letter and spirit of the CLCPA and only leaves a small amount of discretion to the agencies defining the elements of the lifecycle of an emissions source.

QUESTION 5: *PSL §66-p(2) designates “fuel cells which do not utilize a fossil fuel resource in the process of generating electricity” as a “renewable energy system.” What significance, if any, does this designation have for characterizing fuel cells that consume hydrogen, biogas, renewable natural gas, or other non-fossil fuels as “zero emissions”?*

**ANSWER TO QUESTION 5:** We have provided guidance to this issue in our original comments[[4]](#footnote-5). For purposes of clarity, any technologies, whether new or existing, that meet the legal definition of renewable should also be defined as zero-emissions.

QUESTION 6: *As some commenters point out, the “statewide electrical demand system” is not defined in the CLCPA or elsewhere. Staff asks for further comment on the meaning of this term. What definitions does the law support, and how do those definitions relate to electricity generated by resources that are located: (a) outside of New York State, or (b) behind-the-meter?*

**ANSWER TO QUESTION 6:** Our suggestion is that “statewide electrical demand system” should be defined to mean the high-voltage transmission system and the resources connected directly to it, as it is the grid that is statewide, and this statewide demand is met by the wholesale market. If power is sold through the wholesale market, it will therefore be required to be zero-emissions by 2040, whether the generation sources are located in-state or out-of-state.

CONCLUSION

United and ACE NY sincerely appreciate the opportunity to provide these comments. We recognize and appreciate all the effort and time Staff and the Commission have put into this important proceeding and into requesting feedback on how to achieve the 100% emissions free electricity system requirement of the Climate Law.

1. Case 15-E-0302, Joint Comments of Advanced Energy United and the Alliance for Clean Energy New York, Submitted on August 16, 2023.pp. 1-19. [↑](#footnote-ref-2)
2. Id., pp. 1-7. [↑](#footnote-ref-3)
3. Id. [↑](#footnote-ref-4)
4. Id., pp. 10-18. [↑](#footnote-ref-5)