STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard. **Case 15-E-0302**

REPLY COMMENTS OF THE CITY OF NEW YORK ON THE PROCUREMENT OF TIER 4 RENEWABLE ENERGY CERTIFICATES

Dated: March 7, 2022

CITY OF NEW YORK
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PRELIMINARY STATEMENT

The comments submitted to the Public Service Commission ("Commission") in this proceeding on or about February 21, 2022 demonstrate that there is broad-based support for both the Champlain Hudson Power Express ("CHPE") Project and the CPNY Project (collectively, the "Tier 4 Projects" or "Projects"). Not surprisingly, some of the competitors of H.Q. Energy Services (U.S.) Inc. ("HQ") are opposed to the CHPE Project. Other commenters raise concerns about the costs of Tier 4, but they primarily seek untimely rehearing or reconsideration of previous Commission decisions regarding Tier 4 or, more broadly, the Clean Energy Standard ("CES"). A few commenters take issue with the City of New York's ("City") Notice to the Commission regarding its plans to move to a 100% green energy portfolio.[1]

The City respectfully submits that there is a strong record supporting a Commission finding that both Projects are in the public interest. Many of the criticisms pertain to issues that already have been decided by the Commission. Some appear to be little more than incumbent generators seeking to block new entry. Others seem to disregard the need to achieve the State's policy goals

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[1] Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Notice Of The City Of New York Regarding Renewable Resource Procurements (issued November 30, 2021) ("Notice").

in a manner that preserves system reliability (such as by adding dispatchable resources). Overall, none of the objections form a legitimate basis for the Commission to reject either Project.

As to the City's Notice, the City provided information to the Commission for informational purposes. There was no request for the Commission to approve the City's plans, and Commission approval is not required for the City to proceed. Therefore, the comments are of no moment and warrant no consideration.

For the reasons advanced by the New York State Energy Research and Development Authority ("NYSERDA") in its petition for approval of the contracts with HQ and Clean Path New York LLC ("CPNY"),[2] as well as by the City, HQ, CPNY, and numerous commenters in their initial comments, the Commission should approve both Tier 4 contracts.

RESPONSE TO COMMENTS

POINT I

THE TIER 4 CONTRACTS PROVIDE MATERIAL BENEFITS AND WILL FACILITATE ACHIEVEMENT OF IMPORTANT PUBLIC POLICY GOALS

Some commenters have questioned the need for both Tier 4 Projects, and others raised concerns about the costs. The City respectfully submits that both Projects have merit, both Projects are needed, and the contracts for both Projects should be approved.

A. The Need For Additional Transmission Is Well-Documented

In response to the commenters who generally questioned the need for additional transmission, the City respectfully submits that it is well-settled that achievement of the Climate Leadership and Community Protection Act ("CLCPA") will require expanding the State's

[2] Case 15-E-0302, *supra*, Petition Regarding Agreements For Procurement Of Tier 4 Renewable Energy Certificates (filed November 30, 2021) ("Petition").

transmission system to connect renewable resource production areas to downstate load centers. Indeed, numerous reports, studies, and orders over the last decade have established the need for additional transmission capacity into downstate New York.

For example, in 2012, the New York Energy Highway Task Force issued the State Energy Highway Blueprint, stating:

> New York State's electric transmission system faces a longstanding problem of congestion at critical points on the pathways linking upstate and downstate New York. Together, New York City, Long Island, and Westchester County account for more than half of the demand for electricity in the State and this demand is increasing; however, in times of peak demand and high prices, lower-cost and/or cleaner power available from upstate cannot reach these densely populated areas because of the transmission bottlenecks. Congestion can have adverse environmental and economic consequences when older plants in urban areas run more frequently.[3] than they otherwise would if power from other sources of energy could reach these areas.

Since this pronouncement in 2012, the closure of the Indian Point Energy Center ("IPEC") and the imminent effective dates of the Department of Environmental Conservation's Peaker Rule have exacerbated the need for additional transmission to connect upstate clean resources into New York City. The loss of IPEC placed greater reliance on the old, inefficient, fossil-fueled generating units in New York City. Nearly 80% of these units are over 45 years old,[4] use outdated technology for electricity generation, and have orders of magnitude larger emissions than modern generating facilities. Their emissions contribute to negative air quality in adjacent disadvantaged communities and throughout New York City.

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[3] New York Energy Highway Task Force, *New York Energy Highway Blueprint* (issued October 2012) at 38.

[4] NYISO, *2021 Load & Capacity Data Report (Gold Book)* (issued April 2021) at Table III-2.

A sampling of other reports that have discussed the need for additional transmission capacity include:

- "New and upgraded transmission capacity will help to address concerns about maintaining or replacing aging infrastructure; provide greater operational flexibility for dispatching resources; enhance access to operating reserves and ancillary services; and facilitate the ability to remove transmission and generation resources for maintenance when needed. Achieving public policy objectives will require additional transmission capacity in New York State to deliver renewable resources from upstate and northern regions to consumers downstate."[5]

- "In order to achieve its objectives for renewable energy and carbon emissions, New York will need additional transmission capability to deliver renewable resources from upstate New York to consumers throughout the state."[6]

- "Transmission expansion is necessary throughout New York State in order to maximize access to renewable resources."[7]

- "It is necessary to assume a major build out of the transmission system in New York, to enable the upstate renewable resources to contribute to meeting load in the downstate region."[8]

The State Legislature recognized this need as well, enacting the Accelerated Renewable Energy Growth and Community Benefit Act and finding that "[a] public policy purpose would be served and the interests of the people of the state would be advanced by: (a) expediting the regulatory review for the siting of major renewable energy facilities and transmission infrastructure necessary

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5 NYISO, *Power Trends 2018: New York's Dynamic Grid* (issued July 2018) at 48-49, https://www.nyiso.com/documents/20142/2223020/2018-Power-Trends.pdf/4cd3a2a6-838a-bb54-f631-8982a7bdfa7a.

6 NYISO, *Power Trends 2019: Reliability and a Greener Grid* (issued July 2019) at Page 44, available at https://www.nyiso.com/documents/20142/2223020/2019-Power-Trends-Report.pdf.

7 NYISO, *2021-2030 Comprehensive Reliability Plan* (issued December 2, 2021), available at https://www.nyiso.com/documents/20142/2248481/2021-2030-Comprehensive-Reliability-Plan.pdf/99a4a589-7a80-13f6-1864-d5a4b698b916.

8 Analysis Group, *Climate Change Phase II Study: An Assessment of Climate Change Impacts on Power System Reliability in New York State* (issued September 2020), available at https://www.nyiso.com/documents/20142/16884550/NYISO-Climate-Impact-Study-Phase-2-Report.pdf/e9214fd4-9c52-036d-b92b-15f282e686e6 ("Climate Change Study").

to meet the CLCPA targets, in recognition of the importance of these facilities and their ability to lower carbon emissions.[9]

As importantly, it is well established that without additional transmission capacity, significant curtailment of renewable generation will occur, which seriously diminishes the value (*e.g.*, the incremental contribution to the overall clean electricity mix) of adding additional renewable generation upstate. Additionally, consumers would bear higher costs as they would be required to pay for renewable generation that cannot be used and then need to pay for power from other sources. The NYISO's 2019 Congestion Assessment and Resource Integration Study ("CARIS") found that:

> The "70x30" scenario represents possible resource portfolios that are consistent with state mandated policy goals. Results show that renewable generation pockets are likely to develop throughout the state as the existing transmission grid would be overwhelmed by the significant renewable capacity additions. In each of the five major pockets observed, renewable generation is curtailed due to the lack of sufficient bulk and local transmission capability to deliver the power. The results support the conclusion that additional transmission expansion, at both bulk and local levels, will be necessary to efficiently deliver renewable power to New York consumers . . . The level of renewable generation investment necessary to achieve 70% renewable end-use energy by 2030 could vary greatly as energy efficiency and electrification adoption unfolds. Two scenarios with varying energy forecasts and associated renewable build-outs were simulated. Both scenarios resulted in the observation that significant transmission constraints exist when adding the necessary volume of renewable generation to achieve the 70% target.[10]

Similarly, the Power Grid Study performed by Department of Public Service Staff concluded:

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[9] Ch. 58 of the Laws of 2020; Part JJJ, §2(4); *see also* §7(5) ("The legislature finds and determines that timely development of the bulk transmission investments identified in the state bulk transmission investment plan is in the public interest of the people of the state of New York.")

[10] NYISO, *2019 Congestion Assessment and Resource Integration Study* (issued July 2020) at 10, available at https://www.nyiso.com/documents/20142/2226108/2019-CARIS-Phase1-Report-Final.pdf/bcf0ab1a-eac2-0cc3-a2d6-6f374309e961.

> [additional bulk transmission from upstate into New York City and Long Island] would reduce upstate congestion and renewable generation curtailments and allow the downstate (New York City and Long Island) area to reduce its projected reliance on backstop renewable-fueled thermal generation.[11]

The City has long recognized the significant benefits associated with the build out of additional transmission throughout the State and into New York City. It has submitted comments supporting that build out to the Commission and the Federal Energy Regulatory Commission,[12] and it has argued in support of the build out in the stakeholder process at the New York Independent System Operator, Inc. ("NYISO"). The Tier 4 Projects represent a significant and important step toward addressing this need and toward achievement of the CLCPA mandates.

Overall, the City's analysis reveals that absent new transmission, the 2030 mandate of the CLCPA cannot be achieved. That is, even with more than 20,000 MW of land-based renewables (predominantly located upstate) plus 6,000 MW of offshore wind (connected into New York City and Long Island) by 2030, only 61.6% of New York load would be served by renewable resources. Significant congestion on both the Bulk Power System and the 115 kV system will cause curtailments of upstate resources, thereby preventing them from serving downstate load. In fact, the City calculates the cost of congestion in 2030 under those supply assumptions at $755 million.

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[11] Case 21-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Initial Report on the New York Power Grid Study (issued January 19, 2021) at 5.

[12] *See, e.g.*, Matter 17-01821, In the Matter of Carbon Pricing in New York Wholesale Markets, Comments of the City of New York on Integrating Carbon Pricing into the Wholesale Energy Markets (filed November 30, 2017); Case 18-E-0623, In the Matter of the New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2018, Comments of the City of New York on Proposed Public Policy Transmission Needs (filed January 22, 2019); *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generation Interconnection*, Docket No. RM21-17-000, Comments of the City of New York (filed October 12, 2021).

If either Tier 4 Project is added individually, congestion costs can be reduced by 34% to 39%.[13] However, the combination of the two Projects produces substantially greater results, reducing congestion costs by more than 60%. The City's analysis was limited to a single year – 2030, but the congestion benefits will persist over time, creating significant value for consumers and demonstrating the propriety of NYSERDA's decision to select both Projects.

Consistent with the Legislature's public interest finding in the Accelerated Renewable Energy Growth and Community Benefit Act and the Commission's public interest finding in this matter,[14] the Commission should approve both Tier 4 contracts.

B. The Projects Will Provide Multi-Billion Dollar Benefits To New Yorkers

The Tier 4 Projects faced criticism from some commenters due to their associated costs. The City does not dispute that the Projects are expensive. However, any and every long-distance, high-voltage transmission line will be expensive, particularly transmission lines that minimize environmental impacts. Moreover, as discussed above, the necessity of the Tier 4 Projects already has been established. Notably, the State has not historically shied away from advancing meritorious infrastructure projects with known benefits simply due to cost. For example, in 2018,

[13] The largest sources of congestion are the Total East bulk transmission interface and the 115 kV transmission system. Given its location, the CPNY Project reduces more congestion across Total East and on the 115 kV system than the CHPE Project.

[14] Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) ("CES Modification Order") at 79-80, 131. While the Commission reserved judgment on individual Tier 4 contracts, it held generally that "[t]he regulatory action taken in this Order promotes the public interest and ensures that New York consumers will be well positioned to meet the State's objectives in a fair and cost-effective manner." *Id.* at 131.

the Commission approved the offshore wind framework despite projections that the effort could require over $6 billion in expenditures.[15]

Importantly, the Commission determined that in evaluating projects associated with the transformation of the electric system, both costs ***and*** benefits must be considered, and the Societal Cost Test is the "primary measure of cost effectiveness" of such projects.[16] As shown in Appendix C of the Petition, NYSERDA adhered to the Commission's directives and guidance, and it considered both the costs and benefits of the Tier 4 Projects. The analysis reveals that the results are exceedingly net positive. Table 3 in Appendix C of the Petition shows that there are significant financial benefits to be realized by the combination of the two Projects. At a minimum, the State and New Yorkers will realize a $3 billion net benefit. Under what the City believes are more likely outcomes, the State and its residents could realize net benefits of nearly $7.5 billion. Thus, there can be no question that the Projects are consistent with the outcomes envisioned in the CES Modification Order, the State's and Commission's broader efforts to transform the electric industry, and clearly in the public interest.

Some commenters suggested that the Commission should commence a new solicitation for Tier 4 Projects to attempt to achieve lower costs. Those suggestions should be rejected. No proffer was made that any subsequent project would have lower costs, or even comparable costs or benefits. However, the record before the Commission demonstrates that NYSERDA conducted a very competitive solicitation with numerous viable project alternatives, and that NYSERDA

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[15] Case 18-E-0071, In the Matter of Offshore Wind Energy, Order Establishing Offshore Wind Standard And Framework For Phase 1 Procurement (issued July 12, 2018) at 20 ("Offshore Wind Order").

[16] Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Establishing the Benefit Cost Analysis Framework (issued January 21, 2016) at 12.

selected the two Projects that best achieve the CLCPA mandates and CES Modification Order objectives.

As noted above, any transmission project will be expensive, and there is no project or portfolio of projects that will resolve the State's need for additional transmission capacity without incurring substantial costs. The two Tier 4 Projects before the Commission will provide a suite of important and substantial benefits that can be delivered in the near-term and which greatly exceed their costs. Moreover, the City's modeling shows that these two Projects are foundational to the State's ability to achieve the CLCPA mandates in 2030 and beyond, and their benefits will increase over time as more renewable resources are added (*i.e.*, the Projects minimize curtailments and allow for greater utilitization of in-State renewable resources). The City respectfully urges the Commission to remain cognizant of these facts when making its decision in this matter.

C. The CHPE Project Provides Important Tangible Benefits

In response to the criticisms of the CHPE Project, specifically, the City submits that not only are the CHPE and CPNY Projects complementary to each other, there are unique and important benefits of the CHPE Project that warrant that warrant special consideration. The CHPE Project has achieved significantly greater development maturity than any other project that was considered for Tier 4. Indeed, as HQ stated in its initial comments, CHPE has received its Certificate of Environmental Compatibility and Public Need and several amendments thereto (collectively, "Article VII Certificate") from the Commission and a Presidential Permit from the United States Department of Energy, among other permits and approvals.[17] Moreover, its generation resources are already fully operational. Although CHPE still has some outstanding

[17] Case 15-E-0302, *supra,* Comments of HQ and TDI (filed February 7, 2022) at 8.

permits and approvals that are required before it can commence construction, the CHPE Project is still at least two years closer to commercial operation than any other project.[18]

From a risk perspective, it is arguable that the CHPE Project has less risk than any other large-scale renewable project. While many utility-scale renewable resources are contemplated across New York (including offshore of New York), none of a comparable size as the CHPE Project have already constructed their generation components and received permits and approvals for their transmission components. Its latter stage of development makes the CHPE Project unique and of greater value – value that has been captured for New York via its Tier 4 contract.

The CHPE Project also provides the ability to deliver 1,250 MW of fully dispatchable hydroelectric generation.[19] Dispatchable resources are necessary to ensure reliability as additional intermittent resources are added to the grid – a point which the NYISO has made several times in recent reports. For example, the 2020 Reliability Needs Assessment states:

> Dispatchable resources would be needed to fill the gaps created when intermittent renewable resources are not producing energy. Even with a large amount of installed capacity of renewable resources, there would still be a need for significant dispatchable generation to meet reliability requirements at various times throughout the year, including peak load. To maintain system transmission security, approximately 750 MW of dispatchable resources would be needed in addition to the 24,700 MW of dispatchable resources remaining in the model (*i.e.* after age-based removals and peakers).[20]

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[18] Climate science has shown that it is essential to reduce carbon emissions and limit global warming to 1.5 degrees. Achieving this goal requires action as soon as possible, and the CHPE Project is the best-positioned project to help the State materially reduce greenhouse gas emissions at the earliest opportunity.

[19] The CHPE Project's resource portfolio includes 36,910 MW of hydropower. Petition at 22.

[20] NYISO, *2020 RNA Report: Reliability Needs Assessment* (issued November 2020) at 5, available at https://www.nyiso.com/documents/20142/2248793/2020-RNAReport-Nov2020.pdf.

This finding was echoed in the NYISO's 2021 Power Trends Report, which stated "[t]o maintain reliability, bulk power system operators will require a full portfolio of resources that can be dispatched in response to any change in real-time operating conditions. The ability to dispatch resources to reliably meet ever-changing grid conditions and serve New York's electric consumers will always be paramount."[21] The City is not aware of any resource other than the CHPE Project that is capable of providing the long duration dispatchable energy necessary to fill the gaps left by variable production renewable resources at the scale necessary to supplant fossil generation.

By providing a transmission path for the hydropower resources, the CHPE Project will provide an important backstop to the renewable resources needed to meet the CLCPA mandates, including an important complement to the 9,000 MW of offshore wind that the State needs to procure by 2035.[22] Moreover, because the CHPE Project delivers incremental supply into New York City, it will directly reduce the need for in-City generation, thereby causing direct reductions of harmful air emissions and improving air quality.

The CHPE Project's ability to transmit dispatchable resources in the short term and its ability to offset the need for in-City fossil-fueled generation will facilitate the State's achievement of the CLCPA mandates and should be given extra weight by the Commission.

D. There Is Broad Support For The CHPE Project

In considering public sentiment towards the CHPE Project, it must be recognized that there is strong support in favor of the Project which counter-balances the commenters who oppose it. In

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[21] NYISO, *Power Trends 2021: New York's Clean Energy Grid of the Future* (issued July 2021) at 16, available at https://www.nyiso.com/documents/20142/2223020/2021-Power-Trends-Report.pdf/471a65f8-4f3a-59f9-4f8c-3d9f2754d7de.

[22] Environmental Conservation Law § 75-0103(13)(e) and Public Service Law § 66-p(5). Offshore wind is not dispatchable, and its availability is projected to be around 50%. The dispatchability and diversity benefits provided by the CHPE Project are important to preserve system reliability.

fact, the Project enjoys support from a wide range of interest groups and individuals. This is demonstrated by the volume of comments that have been submitted to the Commission urging it to approve the CHPE Project. The Commission received hundreds of letters of support from: (i) environmental and public interest groups, including the New York League of Conservation Voters and Urban Green Council; (ii) labor groups and individual laborers; (iii) higher education institutions; and (iv) chambers of commerce, industrial development agencies, and The New York State Business Council.

In addition, 38 municipal resolutions in support of the Project have been passed and submitted to the Commission, and 18 elected officials have submitted letters in support. The Mohawk Council of Kahnawà:ke in Canada expressed strong support for the Project, evidencing the positive relationship HQ is building with First Nations communities. The CHPE Project also enjoys broader public support, with over 130 individuals stating their support for the Project to the Commission.

Many of those who submitted comments opposing the CHPE Project are entities which have interests that will be better served if the Project does not move forward regardless of how meritorious it may be. The Commission should not allow competitors of the CHPE Project who are driven by preserving their market shares and profits to subvert the best interests of the State. In rendering its decision on the Tier 4 contracts, the Commission should weigh far more heavily the unique benefits the CHPE Project provides and the strong support it has received from communities and individuals who will be impacted by the Project.

POINT II

BOTH TIER 4 PROJECTS ARE NEEDED TO ACHIEVE STATE POLICY GOALS

Some commenters disputed the need for both Tier 4 Projects, arguing that the State can nevertheless achieve the CLCPA mandates. The City's modeling disproves those assertions, and it reveals that the CPNY and CHPE Projects are meritorious and needed to achieve the 70 x 30 mandate. Accordingly, the Commission should approve both Projects.

As noted in the Petition, the Projects have complementary generation portfolios.[23] The CHPE Project will provide 1,250 MW of dispatchable power into New York City. This strongly complements the CPNY Project, which provides a new pathway for 1,300 MW of new renewable resources into New York City, significantly reducing curtailment concerns for upstate resources and simultaneously reducing the need for the fleet of in-City fossil-fueled generating facilities. Moreover, these resource portfolios harmonize well with other resource development that is occurring within the State, including the development of offshore wind.[24]

By adding significant transmission capacity into New York City, as well as power from a geographically and technologically diverse set of resources, the Projects together provide significant bulk system reliability and resiliency benefits. This is of critical importance as the impacts of climate change become increasingly severe. Indeed, a study recently performed by the Analysis Group found that,

> . . . increased transfer capability improves the resilience of the power system to all events that are localized, such as offshore storms or wind lulls that only affect the upstate or downstate regions, as well as to some disruptions

[23] Petition at 16.

[24] *Id.* at 32.

> that affect load and generation across the state, such as heat waves and cold snaps.[25]

This increased resiliency and reliability ultimately translates to improved public health, safety, and financial benefits due to avoided outages. Even localized, short duration power interruptions are associated with increases in cardiovascular, and renal hospitalizations and mortality.[26]

The City's modeling reveals very positive benefits with respect to pricing, reduction in reliance on thermal generation, and air quality. The City's analysis shows that energy prices across New York State will be 9% lower with both Projects in-service as compared to a 2030 reference case without the Projects. Under an aggressive build out of upstate renewables (more than 20,000 MW), energy prices will be almost 18% lower with both Projects than without them.

The City's analysis also shows that the two Projects together result in a significant reduction in thermal generation in both New York State and New York City. Under the same aggressive build out described above, the CPNY Project reduces thermal generation by approximately 12.6% in New York State and 19.9% in New York City, respectively. The CHPE Project reduces thermal generation by 31.1% and 33.6%, respectively. With both Projects, the reduction significantly increases, with thermal generation lower by 38.0% nd 45.7%, respectively.

Operation of both Projects results in significantly higher air quality benefits than would result from either Project alone. The Petition forecasted $1.8 to $4.0 billion in air quality benefits as a result of the Projects.[27] The City's analysis supports NYSERDA's analysis, showing larger reductions in carbon dioxide ("CO_2"), sulfur dioxide, and nitrous oxide emissions from both

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[25] Climate Change Study, *supra.*

[26] Domianianni, C., Lane, K., Johnson, S., *et al.* "Health Impacts of Citywide and Localized Pwer Outage in New York City." *Environmental Health Perspectives*, vol 126, no. 6, 2018; available at https://ehp.niehs.nih.gov/doi/10.1289/ehp2154.

[27] Petition at 16.

Projects than could be achieved by either Project individually. In particular, CO_2 emissions within the power sector would be reduced by 40.2%, or more than 4.5 million metric tons, with both Projects in-service against a 2030 reference case with neither Project in-service.[28] As discussed in the City's initial comments, the reduction in harmful air emissions will have concomitant public health benefits, including reduced rates of asthma and respiratory illness-related emergency room visits. These health benefits translate into lower overall health costs, providing further cost savings to New Yorkers.

The City's modeling further shows that constraints on the bulk power system could prevent achievement of the CLCPA 70 x 30 goal. Under the aggressive build out of more than 20,000 MW of land-based renewable resources, and without the Projects, the percentage of renewable resources serving New York is about 61.6% overall.[29] Adding large amounts of renewable resources in the northern and western parts of the State and in the Southern Tier would not appreciably increase the percentage because of transmission congestion across the Total East and Central East interfaces. In other words, the additional generation would be substantially curtailed. Indeed, the City's analysis shows that under this scenario, (distributed according to the NYISO's 2019 CARIS report). the statewide percentage of renewable resources would increase by less than 2%.

The greatest value of the CPNY Project is that it would significantly reduce congestion across the Total East and Central East interfaces and allow far more upstate renewable generation to be unbottled and thus help achieve the CLCPA mandates. The CPNY Project's benefits will be realized more over the long-term than the short-term – as the penetration of upstate renewable

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[28] The two Projects would result in similar magnitudes of statewide reductions in SO_2 and NO_x.

[29] Because the CLCPA's 2030 mandate pertains to renewable resources, the contributions from the upstate nuclear units are excluded.

resources increases over time (which the City understands is assumed in NYSERDA's analysis), the CPNY Project provides the means to beneficially utilize those resources.

These attributes also make the two Projects complementary and equally important. The CHPE Project brings 1,250 MW of incremental, dispatchable, clean energy into New York State and New York City and the CPNY Project maximizes the utilization of in-State clean energy. Neither Project can replicate the other, and neither Project can provide the same or a similar overall level of benefits to New York as the two Projects can together.[30]

Because the CHPE and CPNY Projects provide additive benefits, it is appropriate and in the public interest for the Commission to approve both Projects.

POINT III

THE COMMISSION SHOULD NOT USE THIS OPPORTUNITY TO RELITIGATE SETTLED ISSUES OR EXPLORE ISSUES BEYOND THE SCOPE OF THIS PROCEEDING

A. Cost Allocation And Cost Recovery Issues Have Already Been Decided And Are Beyond The Scope Of This Matter

Several commenters assert that the Commission should reconsider its prior decisions regarding the manner in which Tier 4 costs are to be allocated among load-serving entities and recovered from customers. These requests constitute an improper attempt to seek reconsideration of settled Orders and should be rejected.

First, a proposal is made to change the cost recovery from a volumetric basis to a demand basis. Those commenters raised the same argument when the Clean Energy Standard ("CES") was

[30] While the focus of this matter has been on achieving the CLCPA's 70 x 30 goal, it is important not to lose sight of the CLCPA's 100 x 40 goal. Both Projects will provide material contributions toward both goals, and their total benefits should be considered by the Commission.

first considered, and the Commission rejected it.[31] When the Commission adopted an Offshore Wind Standard, which is part of the CES, it again determined that costs should be recovered on a volumetric basis.[32] The commenters raise the same reasons. Tier 4, similar to the Offshore Wind Standard, is a component of the CES and should be treated as such. The commenters have provided no justification as to why a departure from the Commission's prior CES decisions is warranted here, and indeed, such a revisiting is improper under the Commission's rules.

Under 6 NYCRR § 3.7, any request for a rehearing of a Commission order must be filed within 30 days of the service of the order that is being challenged. Given that the most recent Commission order regarding cost allocation for CES Tiers was the Tier 4 Order, which was issued in October 2020, the time in which to appeal the Commission's determination on cost allocation lapsed nearly a year and a half ago. The fact that the Commission is now considering an issue related to Tier 4 does not, and indeed legally cannot, provide an opportunity to reopen those issues that have already been decided.

Other commenters raise concerns that the statewide cost allocation of Tier 4 is unfair as Tier 4 is meant to benefit downstate customers. This argument ignores the fact that carbon emissions have global, not local, impacts. Reducing carbon emissions requires broad action that properly should be funded by all.

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[31] Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (issued August 1, 2016) at 147-149 (that issue was raised in the context of zero emissions credits).

[32] Offshore Wind Order, *supra,* at 64.

The Commission has recognized this fact for many years. When it created the System Benefit Charge,[33] and then the Renewable Portfolio Standard,[34] the Energy Efficiency Portfolio Standard,[35] and most recently the Clean Energy Standard,[36] the Commission determined that their associated costs should be socialized across the State. Thus, all consumers funded the programs, and all New Yorkers benefitted (to varying extents) from the air quality improvements, greenhouse gas emissions reductions, and other positive outcomes that resulted therefrom.

Just a week ago, the Intergovernmental Panel on Climate Change ("IPCC") released its latest report on the impact of global warming and climate change.[37] It generally found that climate change could disrupt billions of people and urgent action is needed – locally and globally. According to one of the Chairs of IPCC Working Group II, "'[o]ur assessment clearly shows that tackling all these different challenges involves everyone – governments, the private sector, civil society – working together to prioritize risk reduction, as well as equity and justice, in decision-making and investment.'"[38]

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[33] *See, e.g.*, Case 94-E-0952, Competitive Opportunities Regarding Electric Service, Opinion and Order Concerning System Benefits Charge Issues, Opinion No. 96-12 (issued May 20, 1996) at 14, 56-57; Order Continuing and Expandng the System Benefits Charge for Public Benefit Programs (issued January 26, 2001) at 24-25.

[34] Case 03-E-0188, Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) at 10-11.

[35] Case 07-M-0548, Energy Efficiency Portfolio Standard, Order Establishing Energy Efficiency Portfolio Standard and Approving Programs (issued June 23, 2008) at 69-70.

[36] Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (issued August 1, 2016) at 94-95, 149-150.

[37] IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, the Working Group II contribution to the IPCC Sixth Assessment Report, released February 27, 2022; available at https://www.ipcc.ch/report/ar6/wg2/.

[38] IPPC Press Release, "Climate change: a threat to human wellbeing and health of the planet. Taking action now can secure our future," dated February 28, 2022.

Spreading the costs of Tier 4 statewide is consistent with Commission precedent for public policy programs and it comports with the findings of leading climate scientists regarding the broad-based need for action. Doing so also is fair and equitable. Most carbon-free resources in New York are located upstate, but downstate consumers – approximately 65% of the State's population – have contributed to their development and continued operations. Tier 4 will allow these New Yorkers to more directly benefit from those prior investments and from the reductions in localized air emissions that will result from the CHPE and CPNY Projects. For the foregoing reasons, the Commission should not revisit the cost allocation or cost recovery issues associated with Tier 4.

B. The CHPE Project's Potential Environmental Impacts Have Been Litigated

Several commenters argued that the CHPE Project is not in the public interest due to its potential environmental impacts. These comments ignore the fact that the CHPE Project has already undergone an in-depth environmental review through the Public Service Law Article VII ("Article VII") process.

In issuing an Article VII Certificate, the Commission must make a finding that, *inter alia*, identifies the "nature of the probable environmental impact" and that the proposed transmission line "represents the minimum adverse environmental impact considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations . . . ."[39] The Commission issued an Article VII Certificate for the CHPE Project after three years of environmental review process that included the submission of hundreds of documents, settlement negotiations, evidentiary hearings, and briefs. The Article VII Certificate contains conditions that are meant to minimize the environmental (and other) impacts of the

[39] Pub. Serv. L. § 126 (a), (c). The standard for PSL §126(c) has been modified since the CHPE Project received its original Article VII Certificate.

Project.[40] The conditions range from prescribed construction methodologies to rare, threatened, and endangered species protection measures. These conditions ensure that the Project will be constructed, operated, and maintained in a manner that respects and protects sensitive environmental resources.

Importantly, the venue for challenging the environmental impacts of the CHPE Project was in the Article VII proceeding. The issue before the Commission in this matter is only whether the Tier 4 contracts are in the public interest and should be approved. The Commission should not countenance any attempt by the opponents of the CHPE Project to relitigate issues decided in the Article VII proceeding and decided in the issuance of the Article VII Certificate for the Project..[41] The opportunity to seek rehearing and otherwise challenge the Article VII Certificate has long since lapsed, making any challenge to it or the Commission's underlying findings untimely and unsustainable.

POINT IV

NO COMMISSION ACTION IS REQUIRED IN CONNECTION WITH THE CITY'S NOTICE

About 15 years ago, the City first adopted public policies to strengthen the New York City economy, combat climate change, enhance the quality of life for New York City residents, and transition to a greener New York.[42] Consistent with these public policies, the City has made a very

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[40] Case 10-T-0139, Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the PSL for the Construction, Operation and Maintenance of a High Voltage Direct Current Circuit from the Canadian Border to New York City, Order Granting Certificate of Environmental Compatibility and Public Needs Subject to Conditions (issued April 18, 2013).

[41] To the extent there are any concerns with the potential environmental impacts of the CPNY Project, those issues should be raised in the Article VII proceeding for that Project.

[42] The original policy plan was called PlaNYC 2030. It has since evolved into OneNYC 2050.

significant decision to procure 100% green power for all of its buildings and facilities. The manner in which the City plans to implement this decision could affect NYSERDA's recovery of CES-related costs and may require a reallocation of such cost recovery among the load-serving entities ("LSEs") subject to the Commission's jurisdiction. Therefore, the City advised the Commission of its plans in order to allow the Commission to determine – well prior to the date any reallocation would arise – whether and how to reallocate the costs among its jurisdictional LSEs.

To be clear, while the City's buildings and facilities are connected to and served by Consolidated Edison Company of New York, Inc.'s ("Con Edison") electric system, the City's LSE is the New York Power Authority ("NYPA"), not Con Edison. Pursuant to Section 1014 of the Public Authorities Law, NYPA is not subject to the Commission's ratemaking jurisdiction. For this reason, while the City thought it would be appropriate to provide a notice of its intentions to the Commission, it was not required to seek Commission approval of those intentions. Three commenters – New York Municipal Power Agency ("NYMPA"), Nucor Steel Auburn, Inc. ("Nucor"), and the Long Island Power Authority – suggested that the Commission deny the City's plans. Those suggestions are academic as there is no action for the Commission to take regarding the Notice or the comments on the Notice.

Two other aspects of those comments warrant a brief response. NYMPA argued that the City's notification to the Commission constitutes an "impermissible collateral attack on prior Commission Orders."[43] This assertion is incorrect. Because the Commission's CES Orders are not binding on NYPA or its direct customers, there was no reason for the City to seek

[43] Case 15-E-0302, *supra*, Comments of the New York Municipal Power Agency (filed February 7, 2022) at 4-6.

reconsideration of them. Moreover, the City did not ask the Commission to revisit or modify any of its prior decisions.

Nucor posited that the Commission should reconsider its prior decisions and whether customers of jurisdictional LSEs could avoid or modify their CES obligations.[44] This proposal is an impermissible collateral attack on the prior CES Order, and comments on the NYSERDA Tier 4 Petition are not a proper means of raising unrelated affirmative requests for Commission action.

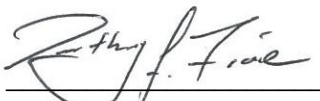
The City has long argued that there is a need for bold action to address the climate crisis, and that there is a need for more transmission connecting upstate renewable production areas to downstate load centers. Tier 4 responds to both arguments, and the City believes it important to demonstrate its commitment to the positions it has advanced. Its decision to procure approximately four million Tier 4 RECs per year shows its willingness to take bold action and to lead by example. Importantly, the City is doing so in a manner that provides substantial benefits to other ratepayers throughout the State of New York. Not only will it far exceed the totality of the requirements of the Clean Energy Standard, it will reduce other New York consumers' energy costs by billions of dollars.

[44] Case 15-E-0302, *supra*, Comments of Nucor Steel Auburn, Inc. Concerning Proposed Tier 4 Contracts (filed February 7, 2022) at 22.

CONCLUSION

Tier 4 is a critical component to achieving the State's and City's public policy goals. As described in the Petition, the benefits of the Projects exceed their costs by billions of dollars, and thus the Commission should find that they are cost-effective. For the reasons set forth herein, in the Petition, and in the CES Modification Order, the Commission should further find that the CHPE and CPNY Tier 4 Contracts are in the public interest. Based on these findings, the Commission should approve them and authorize NYSERDA to fully implement the Tier 4 program.

Respectfully submitted,



Anthony J. Fiore
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Dated: March 7, 2022
New York, New York