Joint Legislative Public Hearing
2023 Executive Budget Proposal
Environmental Conservation

Written Testimony

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Thank you, Chairs Krueger, Weinstein, Harckham, and Glick for the opportunity to submit testimony. I am Gavin Donohue, President & CEO of the Independent Power Producers of New York ("IPPNY"). I am also a member of the Climate Action Council. This year is my 22nd as the leader of IPPNY, and, previously, I was the Executive Deputy Commissioner for the New York State Department of Environmental Conservation ("DEC").

My testimony makes two key points:

- IPPNY supports an Economywide Cap-and-Invest program, if done correctly.
- There is no reason for the New York Power Authority ("NYPA") to re-enter the renewable generation and energy storage business.

IPPNY, established in 1986, is a premiere trade association dedicated to the representation of the State's electric generation fleet, which powers New York's economy. IPPNY Members produce clean electricity generation in this state; our Members have been successfully awarded more than half of the renewable energy credit ("REC") contract awards from the New York State Energy Research and Development Authority ("NYSERDA"), are leading proponents of meeting the State's energy goals, while maintaining reliability, and are operating the facilities and making investments in additional ones to achieve the Climate Leadership and Community Protection Act's ("CLCPA") targets. IPPNY Members also produce more than 75 percent of the State's power from a multitude of fuel sources, such as: wind, solar, hydro, energy storage, natural gas, low sulfur oil, waste-to-energy, biomass, and nuclear. In combination, these resources maintain electric system reliability and "keep the lights on" for more than 19 million New Yorkers every day. Additionally, IPPNY's Members have invested more than $10 billion in capital improvements at their facilities, employ over 10,000 people across the State, and pay approximately $1.7 billion in local property taxes annually. IPPNY does not represent investor-owned utilities or power authorities.

In 1996, the New York State Public Service Commission's ("PSC") Competitive Opportunities Case restructured the monopolies held by the State's investor-owned utilities, largely in part to insulate consumers from the stranded costs associated with the utilities' failed power projects.[1] New York's utilities subsequently divested their electric generation facilities to independent power producers ("IPPs"). As a result, today, private investors bear the risk of their investment decisions and cannot charge ratepayers for recovery of all of their costs, like utilities used to do when they were in charge of power generation prior to 1999. Additionally, since 2000, through the implementation of competitive electricity markets (and regulatory requirements), power producers in New York State have developed

[1]Opinion No. 96-12 within PSC Cases 94-E-0952 et al. - In the Matter of Competitive Opportunities Regarding Electric Service.

12,900 megawatts of new power projects while simultaneously reducing emissions of sulfur dioxide by 99%, nitrogen oxides by 92%, and carbon dioxide by 55%, all while having an incredibly reliable grid.[2]

The purpose of this hearing is to examine the Environmental Conservation section of Governor Kathy Hochul's Executive Budget Proposal and environmental topics that are linked to energy matters. My testimony expresses strong support for the Economywide Cap-and-Invest program if its implementation details are done correctly to meet the CLCPA's targets. Further, my testimony today cautions against the ratepayer impact that will arise if NYPA is allowed to construct and own new renewable energy and storage facilities. I provided similar testimony[3] last July at the New York State Assembly's hearing on the *Role of State Authorities in Renewable Energy Development*. Additionally, my filed statement[4] at the final meeting of the State's Climate Action Council in December also noted the increased consumer costs that would arise from more public power projects. Further, my testimony[5] at the Senate Finance hearing last month on the Council's Scoping Plan implementation included the importance of a market-based approach for carbon pricing and discussed the Economywide Cap-and-Invest Program within the Plan. Today, my testimony provides additional insights in the context of the Governor's proposals.

Economywide Cap-and-Invest Can Be a Viable Solution, If Done Properly.

New York's generators have been vocal supporters of putting a price on carbon for many years, and this approach is essential to advancing our clean energy goals.[6] We have worked on the development of a carbon pricing proposal at the New York Independent System Operator ("NYISO") since 2017, when it first was proposed.[7] IPPNY's Member companies helped shape the Regional Greenhouse Gas Initiative ("RGGI[8]"), since it first was envisioned in 2003, and have been subject to the program when it officially began for our state in 2009.

Notable economists believe that putting a price on carbon is an effective way to incentivize decarbonization and raise revenues to cover costs of implementation of the State's Climate Plan, which would foster needed innovation to help meet the CLCPA's goals. Simply put, market-based, economywide carbon pricing is the best way for New York to achieve its ambitious climate targets.

An economywide program is very important, as is having a regional approach to address emissions and economic leakage. RGGI was originally intended to evolve into an economywide approach, and the seeds for a regional economywide program have been planted. Our RGGI partner states are also looking at economywide approaches[9].

As is the case for all new programs, critically important implementation details need to be worked out for this program to be successful. The DEC and NYSERDA developed the framework of the RGGI program through a Memorandum of Understanding with the RGGI states[10] and subsequent regulations[11] for a New York State specific program. The regulations cover the structure of the overall RGGI program and the corresponding use of its auction revenues. Similarly, DEC and NYSERDA

[2] U.S. Energy Information Administration and NYISO Power Trends 2022
[3] Written Testimony – Role of State Authorities in Renewable Energy Development
[4] Written Statement – Adopted Climate Action Council Scoping Plan
[5] Written Statement – NYS Senate Public Hearing
[6] Advancing New York State's Clean Energy Goals
[7] https://www.nyiso.com/-/support-building-for-nyiso-s-carbon-pricing-plan
[8] https://www.rggi.org/
[9] https://www.rggi.org/sites/default/files/Uploads/Climate-Commitments/RGGI_State_Climate_Commitments.pdf
[10] https://www.rggi.org/program-overview-and-design/design-archive
[11] 6 NYCRR Part 242 - CO2 Budget Trading Program and 21 NYCRR Part 507

should conduct an even more transparent, comprehensive, and inclusive stakeholder process to develop the regulations for the Economywide Cap-and-Invest program proposed in Governor Hochul's Executive Budget proposal.

The Cap-and-Invest program could work as a properly structured market model that reduces emissions, is affordable for consumers, and sends signals to power producers to build the next generation of resources. Among the components of a properly structured program are: deciding what the emissions cap will be and how it will decline; setting how many allowances will be sold in each auction; establishing a floor price and a ceiling price for the sale of allowances to protect consumers; deciding how auction revenues will be used; addressing emissions and economic leakage; and establishing how the program will be enforced.

The Governor's Briefing Book proposes using allowance auction proceeds to support the State's investments in climate mitigation, energy efficiency, clean transportation, and other projects, in addition to funding a Climate Action Rebate. The allowance auction proceeds under the Cap-and-Invest program should also be used to address the upfront costs of consumers' compliance with the Council's Scoping Plan, as well as be used to help develop the dispatchable emissions free resources that are needed to help us reach our climate targets and maintain electric system reliability.

Private Investment has Been Successful in New York, and NYPA Should NOT Be Able to Build and Own New Renewables and Energy Storage.

More than 20 years ago, New York and many other states made the decision to redesign a failing electric utility industry model, transitioning from one where utilities and state authorities developed new electric generation projects to a system where that function is handled by private independent power producers - who have met this challenge and will continue to do so as we work towards reaching the CLCPA's 2030 and 2040 targets. The change was designed to relieve ratepayers from decades of utility cost overruns and bad decisions and, instead, rely on competitive market signals to drive efficient investment decisions made by IPPs thereby insulating ratepayers from potential stranded costs of failed projects. Billions of dollars of private investment are currently lined up to help achieve New York's law; however, NYPA's involvement will raise costs, and every NYPA project built eliminates what otherwise would be local taxes paid by the facility, given that NYPA does not pay taxes. If NYPA were allowed to develop renewable projects and expand its customer base, the financial risk associated with NYPA's failed power projects would shift to those additional customers.

Allowing NYPA to develop renewable power projects is not the answer to furthering the State's renewable energy goals. Unfortunately, New York already has experience with power authorities' customers being subject to the stranded costs of failed power projects. NYPA has evidence of failed power projects, including its Hudson Transmission Partners project which now represents an approximate liability of $645 million for NYPA.[12] "It is estimated that the Authority's under-recovery of costs… could be in the range of approximately $90 to $110 million per year over the next five years of commercial operation, according to NYPA's 2015 report."[13] Further, according to New York State Comptroller Thomas P. DiNapoli's recent audit of electric vehicle charging infrastructure deployment, "…despite millions invested, NYPA's Evolve NY charger deployment threatens the State's ability to

[12] Krapels, Edward N. "Triple Jeopardy: How ISOs, RTOs and incumbent utilities are killing interregional transmission." The Electricity Journal 31.3 (April 2018): 47-51

[13] Giambusso, David. "Underperforming NJ-NY transmission line becomes money pit for state authority." Politico June 27, 2016

meet the Climate Act's 2030 deadline."[14] New York's ratepayers should not have to bear the risk of NYPA's past, present, or future failures.

Since the introduction of competitive markets in New York, private investment has had a positive impact for electricity consumers. The competitive wholesale electricity market has provided benefits, such as: shifting project investment risks away from captive ratepayers; increased system efficiency, reliability and availability; substantially reduced air emissions; and expansive growth in renewable energy, energy efficiency, and demand response resources.

Currently, there is an abundance of projects in varying stages of development and construction being proposed by private developers in New York. Energy officials within Governor Hochul's administration have also provided testimony that the State is on track to achieve the CLCPA's mandate of 70 percent renewable electricity through contracts with private developers. NYSERDA President and CEO Doreen Harris testified, "projects already in existence or under active development will result in 66 percent of statewide electricity coming from renewable resources [by 2030]", at the Assembly's July 28, 2022, hearing on the *Role of State Authorities in Renewable Energy Development.*[15] As stated by NYSERDA's President and CEO, sufficient projects are already in the works and the State is well on its way to meeting the CLCPA objectives. More than 50,000 megawatts of wind, solar, and battery storage projects currently in the NYISO's Interconnection Queue.[16] Further, IPPs have a long, successful history of responding to Requests-for-Proposals for procurement of RECs issued by NYSERDA. Nearly 6,500 megawatts of renewable capacity are currently installed, and more than 120 renewable projects totaling over 12,000 megawatts have received awards. There is no evidence that proposals submitted by IPPs in response to solicitations by NYSERDA are inadequate or that the CLCPA's requirements cannot be met by private developers. Also, NYPA Interim President and CEO Justin Driscoll testified at that same Assembly hearing that "NYPA does not believe that we have a cost advantage in developing renewable generation." Additionally, if NYPA, as the Governor' Budget Bill proposes, was to reenter the renewable construction and ownership business, its projects would be subject to the same siting and interconnection processes as IPPs, waiting for studies to be completed. Therefore, NYPA's involvement would not help us get closer to our climate goals any quicker.

As discussed above, New York State has a sufficient supply of privately developed renewable projects operating or in development, and, as a result, there is no renewables supply problem to solve. Allowing NYPA to build and own renewables and energy storage is not the answer to meeting the State's CLCPA targets. NYPA is already executing its CLCPA-required renewable energy job, which is to build transmission to move renewable energy throughout New York State. IPPNY is part of a coalition of renewable and energy storage business groups that are working together to oppose legislation[17] that would allow NYPA to build and own new renewable and energy storage projects. NYPA should only be allowed to build renewables and energy storage if NYPA, NYSERDA, the NYS Department of Public Service, and the NYISO deem the CLCPA's renewable goal is not being met, after it is clear that competitive procurements are not working – which is currently NOT the case.

The PSC's determination that IPP companies can build and operate generation more efficiently than utilities was one of the main reasons the Commission decided to restructure the electric utility industry

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[14] DiNapoli, Thomas P. New York State Comptroller. New York Power Authority – Selected Management and Operations Practices. New York: February 2022 (New York Power Authority: Selected Management and Operations Practices (state.ny.us)).
[15] https://nyassembly.gov/av/hearings/
[16] https://www.nyiso.com/interconnections
[17] https://www.ippny.org/page/legislative-memos-63/news/memorandum-in-strong-opposition---s4134-parker--a279-carroll-953.html

in New York and the NYISO's competitive wholesale electricity market was created. Consistent with this policy, the PSC barred the State's monopoly utilities from constructing and owning generation. This outcome was due to the potential that such ownership would inhibit entry by private market participants, which could result in less competition and higher consumers costs.

The possibility of NYPA developing and owning renewables and energy storage could end up deterring these private investors and ultimately harm ratepayers. NYPA has more than 1,000 customers[18], from local and state governments (such as the New York City Housing Authority, New York City government, the Metropolitan Transportation Authority, Westchester County government and numerous municipalities and school districts), to large and small businesses and non-profit organizations (such as colleges, universities, and hospitals) that currently rely on its energy rates. NYPA issues bonds to pay for its projects and sets its own rates. Recovery of all NYPA's costs from its ratepayers is guaranteed. Conversely, IPPs cannot charge ratepayers for recovery of their risks and costs. If costs would increase for ratepayers and we would not be achieving our climate goals any quicker, why subject New Yorkers to this unnecessary change?

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[18] https://www.nypa.gov/power/customers/nypa-customers