October 31, 2025

Submitted Electronically

TO: The Honorable Michelle L. Phillips, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case 15-E-0302 – Proceeding to Implement a Large-Scale Renewable Program and a Clean Energy Standard
Comments in response to the Public Service Commission's questions regarding utility-owned generation

New York Solar Energy Industries Association ("NYSEIA"), New York Battery Energy Storage Technology Consortium ("NY-BEST"), Solar Energy Industries Association ("SEIA"), and the Coalition for Community Solar Access ("CCSA") (hereafter referred to as the "Solar + Storage Parties" or "SSP"), respectfully offer the following comments in response to the questions posed by the New York Public Service Commission regarding utility ownership of renewable generation in the *Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings* issued on May 15, 2025, pages 65-66. We greatly appreciate the Commission's consideration of our comments and recommendations.

Respectfully submitted,

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/s/	/s/	/s/	/s/
Executive Director	Executive Director	NE Regional Director	NE Regional Director
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding to Implement a Large-Scale Renewable	**)**	
Program and a Clean Energy Standard	**)**	**Case 15-E-0302**

SOLAR + STORAGE INDUSTRY COMMENTS IN RESPONSE TO DPS STAFF QUESTIONS REGARDING UTILITY-OWNED GENERATION

Introduction

On May 15, 2025, the Public Service Commission (Commission) issued an *Order Adopting Clean Energy Standard Biennial Review as Final and Making Other Findings* in Case 15-E-0302 (Biennial Review Order). In addition to the actions taken to modify the Clean Energy Standard and maintain progress towards the State's clean energy goals, the Commission sought additional input on two topics in particular: (1) utility ownership of renewable generation and (2) comprehensive review of the State's renewable solicitation practices. With respect to utility ownership of renewable generation, the Commission sought comment on a series of questions to help better inform its assessment of whether changes to that policy might serve the interests of ratepayers. On July 30, 2025, the Commission issued a Notice soliciting comments on these two topics.

On behalf of the New York Solar Energy Industries Association ("NYSEIA"), New York Battery Energy Storage Technology Consortium ("NY-BEST"), Solar Energy Industries Association ("SEIA"), and the Coalition for Community Solar Access ("CCSA") (hereafter referred to as the "Solar + Storage Parties" or "SSP"), we respectfully offer the following in response to the questions posed by the New York Public Service Commission regarding utility ownership of renewable generation (from the Biennial Review Order, pages 65-66).

Comments

The SSP oppose utility-owned generation, specifically because there is no way to ensure effective and fair oversight that would prevent vertical market power and information asymmetry. Market restructuring was implemented in the late 1990s to introduce competition and limit the electric utility's natural monopoly to transmission and distribution, which we have seen play out over the past 25 years. Restructuring cleared a path for billions of dollars of private investment in the state. Independent power producers compete for the opportunity to develop generation at the lowest cost while diversifying supply and creating thousands of jobs. Unbundling generation from distribution and transmission increased transparency and oversight, ensuring that prices reflect market value rather than being tied to utility cost recovery and guaranteed rates of return. Private investment, increased transparency, and competition all benefit ratepayers by delivering

reliable electricity at the lowest possible cost, protecting against utility cost overruns and shifting market risk to the developers.

It is well-documented that competitive electricity markets have achieved superior outcomes for ratepayers compared to Utility-Owned Generation ("UOG"). Between 1996 and 2022, average retail electric rates in states with restructured electricity markets declined by 13.3%, while rates in vertically integrated states with UOG increased by 2.9%.[1] New York's transition to competitive markets, initiated in response to the second-highest electricity costs in the U.S. in 1994, has been widely recognized as successful. The Commission's recent reexamination of the Vertical Market Power Policy following enactment of the Climate Leadership and Community Protection Act ("CLCPA") found that stakeholders generally indicated the policy had struck an appropriate balance between competitive markets and project risk allocation.[2,3] We respectfully urge the Commission to preserve this balance by limiting broad utility ownership of renewables and energy storage.

Our comments include the following sections:

- Point 1: Broad Utility Ownership Will Increase Costs to Ratepayers
- Point 2: Broad Utility Ownership Will Slow Progress Toward Energy Goals
- Point 3: Broad Utility Ownership Will Distort the Market
- Point 4: Utility Ownership is Not the Solution – Permitting Reform, Interconnection Reform and Rate Design Improvements are Needed
- Point 5: Revised Utility Incentives are Needed to Deliver Progress toward Climate Act and Affordability Goals
- Answers to specific Commission Questions

Point 1: Broad Utility Ownership Will Increase Costs to Ratepayers

Unlike competitive suppliers who bear direct financial consequences for project inefficiencies, utilities operate under a cost-of-service model with guaranteed recovery of expenses plus a rate of return. This fundamental structural difference has material implications for ratepayer costs.

- *Documented pattern of cost overruns.* New York utilities have an established track record of capital project cost overruns that are ultimately borne by ratepayers. For example, Con Edison's Fox Hills Energy Storage System (7.5 MW/30 MWh) experienced total costs of approximately $36.7M, representing a 67% budget overrun and a cost of approximately $1,220/kWh,[4,5] nearly double the cost typically reported by third-party developers in New York City. Utilities lack the competitive market incentive to complete projects on time and at lowest cost. As a result, with UOG, the risk of cost overruns, project delays, and unsuccessful projects would be transferred from developers and their investors to captive ratepayers.

[1] FTI Consulting, *An Evaluation of Regulated and Restructured Electricity Markets.* November 2024. Access here.

[2] NYS DPS and NYSERDA. Case 15-E-0302. *Draft Clean Energy Standard Biennial Review*, July 1, 2024 (p76). Access here.

[3] FTI Consulting, *Competitive Power Benefits for New Yorkers*. March 2025. Access here.

[4] Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act,* CECONY January 2025 Phase 1 Report, January 2, 2025.

[5] Case 22-E-0064, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service,* Report on 2024 Second Quarter Capital Expenditures, August 15, 2024, p22, 28-31.

- *Deteriorating cost of capital advantage.* The premise that utilities maintain superior access to a low cost of capital requires critical assessment. While utilities are generally well capitalized, recent credit rating agency assessments indicate significant constraints:
    - Moody's noted that ConEd's credit is "constrained by high capital spending to meet service requirements and the state of New York's energy transition plans, which could place additional pressure on customer rates and debt financing requirements,"[6] with planned expenditures of approximately $25 billion between 2024-2028.[7]
    - NYSEG and RG&E stated in January 2025 that "substantial capital investments to support New York's achievement of its climate goals" are causing "strained credit metrics."[8]
    - FitchRatings revised NYSEG's outlook to "Negative" in 2024, citing weak financial metrics partially attributable to CLCPA Phase 1 investments, noting potential credit downgrades that would increase borrowing costs.[9]

  Utilities have a finite capacity to raise capital at favorable rates, and must already make substantial investments to modernize their aging transmission and distribution infrastructure to support electric load growth. Expanding the scope of utilities' regulated investments could put upward pressure on rates.

- *Capital cost risk transfer to ratepayers.* Expanding utility ownership would shift risks currently borne by private developers to ratepayers. Whereas third-party developers assume financial loss when projects face permitting challenges, are subject to increased costs or delays, or are cancelled for other reasons, utilities pass the risk of unrecovered expenses to ratepayers. This is particularly concerning for low-income households who can least afford to bear these risks during a period of intensifying energy affordability concerns.

- *Performance risk transfer to ratepayers.* Private developers and independent power producers (IPPs) raise and deploy private capital to build resources whose profitability are reliant upon cost-effective management and performance over time. By contrast, regulated utilities deploy capital to build resources and their return is based solely upon the cost of the resource. In other words, the profitability of utility-owned generation and storage is not dependent on the assets' performance. This inherent structure increases the likelihood that utility-owned resources will not be maintained or operated optimally, shifting asset performance risk to ratepayers that would otherwise be borne by a private developer or IPP.

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[6] Moody's Investors Service, *Credit Opinion: Consolidated Edison Company of New York, Inc.*, February 1, 2024. Referenced as Exhibit__(JCN-33) in Direct Testimony of Return on Equity Panel (p55). Access here.

[7] FitchRatings, *Fitch Rates Consolidated Edison Company of New York's Senior Unsecured Debentures 'A-'* , November 14, 2024. Access here.

[8] Avangrid, Case 20-E-0197, *Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act*, January 3, 2025. Access here.

[9] Fitch Ratings, *Fitch Revises NYSEG's Outlook to Negative; Rates Green Notes 'A-'; Affirms IDR*, August 1, 2024. Access here.

Point 2: Broad Utility Ownership Will Slow Progress Toward Energy Goals

Expanded utility ownership risks delaying achievement of CLCPA mandates by chilling private investment and diverting utility focus from essential transmission and distribution infrastructure.

- *No demonstrated timeline advantage.* The premise that utilities can develop renewables and storage more rapidly than private markets is not supported by the reality of the development process, or by the utilities' demonstrated experience in development through their regulated or unregulated businesses. Project timelines for new renewable and storage facilities follow substantially similar sequences for utilities and private developers, including project planning, regulatory approvals, permitting approvals, environmental reviews, equipment procurement, and construction. Utility ownership would not provide material relief from development timelines in the context of meeting Climate Act goals.

- *Adequate private market capacity.* There is substantial private sector capacity to meet Climate Act requirements without broad utility ownership. The NYISO interconnection queue contains over 30 GW of energy storage resources in the current transition cluster. At the distribution level, New York State interconnected more than 1 GW of distributed solar capacity in 2024 alone and the Con Edison queue includes over 1 GW of battery energy storage system (BESS) projects that have made partial or full interconnection payments. This demonstrates a robust market appetite for renewable and storage development.

- *Risk of chilling private investment.* Expanded utility ownership may significantly diminish private sector participation for two main reasons. First, since utility projects pass cost-overrun risk to ratepayers, utilities can assume highly optimistic economics when bidding for sites or evaluating interconnection costs, thereby undercutting private sector opportunities. Second, regulatory and market uncertainty associated with utility participation in generation and storage markets increases perceived risk among developers and financiers, largely out of concern that the utilities will use their competitive advantage to crowd out third parties, as further discussed in Point 3 below. This could slow investment in renewables and storage in New York State, threatening CLCPA targets. Notably, any perceived increased risk by financiers will likely result in higher cost of capital for private projects, increasing the overall cost of reaching CLCPA goals.

- *Diversion of utility focus.* Substantial transmission and distribution ("T&D") infrastructure upgrades will be essential for successful energy transition in New York State. The Edison Electric Institute estimates the investor-owned utilities will need to invest more than $1.1 trillion for the five-year period of 2025-2029,[10] a big lift even without an expansion of utilities' scope. However, several transmission projects have already experienced delays and cost overruns. Considerable expansion of utility oversight of renewable and storage buildout could slow progress on T&D infrastructure, which only utilities can provide and which is critical to enabling all clean energy development. If utilities attempt to address this issue by increasing staff and resources, that will only further increase costs to ratepayers.

[10] Edison Electric Institute. 2024 Financial Review. July 2025.

- *Impact on private interconnection.* The potential impact of utility-owned projects on private renewable and storage interconnection requires careful examination. Adding utility-owned resources to congested networks could diminish hosting capacity for private projects. Additionally, prioritizing utility-owned solutions could impact progress on reforms beneficial to private sector projects, such as improving hosting capacity transparency, streamlining interconnection processes, and reforming distribution tariffs to maximize the value of bidirectional resources.

Point 3: Broad Utility Ownership Will Distort the Market

Utility ownership creates structural competitive disadvantages for private projects and market price distortions that undermine the effective functioning of New York's competitive electricity markets.

- *Unfair competitive advantages.* If utility-owned projects are permitted to compete with private sector projects, they would possess significant structural advantages unavailable to third parties, including privileged access to distribution interconnection information, processes, and control that third parties cannot access. An additional structural advantage for UOG is that utilities will not bear the risk of cost overruns,[11] creating a perverse incentive for utilities to underestimate costs, thereby securing bids over private market developers, only to later incur cost overruns that are borne by ratepayers. These asymmetries would create an uneven competitive landscape that discourages private investment and, as the Maryland Public Service Commission observed, would "creat[e] a regulatory disincentive for third-party programs"[12] such as virtual power plants with non-utility aggregators.

- *Ratepayer disparities across service territories*. While NYSERDA's large-scale renewable and energy storage procurement program costs are socialized statewide in proportion to load share, cost impacts from utility-owned projects are specific to individual service territories. This could cause bills in certain service territories to increase more than others, creating perceptions of inequitable distribution of energy transition costs and potentially contributing to community opposition against the clean energy transition in areas with higher concentrations of utility-owned projects.

- *Challenges with "non-market" energy storage resources.* The Commission has previously approved utility-owned energy storage to provide "non-market T&D services." However, certain projects originally proposed as "non-market" were later allowed to participate in the market; for example, National Grid's East Pulaski Substation energy storage project was originally constructed to provide reliability benefits in 2018 but was subsequently approved to operate in wholesale markets in 2021. The risk that utilities will be permitted to build market-participating projects increases perceived regulatory uncertainty and cost of capital for private developers. In addition, resources that are not formally operating in markets may nonetheless affect market economics. Given that a primary driver for energy storage deployment involves shifting energy from periods

[11] Even if the Commission were to prohibit cost overruns of the development or operation of UOG from being borne by ratepayers, those overruns would then be run by shareholders. If shareholders have that increased exposure to risk, the cost of capital for utilities will increase, and thereby erode the supposed cost benefit of UOG resulting from a lower cost of capital.

[12] Maryland PSC. Orders 91812 and 91705 rejecting a residential BTM BESS program proposal from Exelon. June 2025.

of excess generation to periods of peak demand, utility-owned resources performing this function (whether characterized as market-participating or not) will suppress economics for competitive suppliers. Further, if utility-owned resources operate uneconomically without regard to market prices, utilities will pass losses to ratepayers while distorting market signals.

Point 4: Utility Ownership is Not the Solution – Permitting Reform, Interconnection Reform and Rate Design Improvements are Needed

The key barriers to clean energy deployment in New York State are not lack of private investment or capable developers. New York's highly successful distributed solar sector, supported by NYSERDA's NY-Sun program combined with smart rate design and a standardized interconnection process, is clear proof that the private sector can mobilize resources to achieve ambitious clean energy goals. In October 2024, New York celebrated surpassing the Climate Act mandate to deploy six gigawatts of distributed solar more than a year ahead of schedule, and we're ahead of schedule and under budget toward New York's 10 gigawatt by 2030 goal. The same market frameworks that enabled New York's distributed solar success, primarily driven by community solar, are now being applied toward retail BESS; another market that is now on track to outperform expectations. The distributed solar + storage market does face challenges that threaten to slow deployment; however, none of these challenges would be addressed by enabling UOG. The key barriers impacting this sector and the large-scale renewables sector are universal development challenges, such as supply chain disruption and inflationary pressures, combined with New York's permitting challenges and rising interconnection costs.

Authorizing New York's regulated utilities to build and own new generation and energy storage will not address these underlying issues. Rather than diverting Department of Public Service (DPS) Staff and utility resources toward creating a framework for enabling utility-ownership, the SSP instead urge the Commission and State policymakers to double down on New York's successes and dedicate resources toward solving the structural problems that impact all market participants, such as:

- *Improving the accuracy of New York's Value of Distributed Energy Resources (VDER) tariff* and other tariffs/programs to appropriately compensate clean and dispatchable resources, which will animate the market and accelerate deployment. New York's VDER tariff is based on outdated Marginal Cost of Service values that have not been updated since 2017, despite the fact that the cost to build new utility infrastructure has increased precipitously in recent years. The result is that distributed energy resources are often undercompensated for the value they provide to the system and ratepayers, resulting in less of these clean energy resources being deployed in lieu of traditional transmission and distribution system upgrades. Improving the VDER tariff to be more accurate and continuously improving programs such as the Dynamic Load Management program will allow more cost-effective distributed energy resources to be deployed and ensure that they operate in a manner that maximizes value for ratepayers.

- *Advancing permitting improvements* for utility-scale and distributed renewables and energy storage, which will provide low-cost alternatives to costly grid investments. Permitting improvements will offer additional tangible ratepayer benefits by lowering development costs and thereby reduce reliance on ratepayer-funded market support mechanisms through NYSERDA.

While New York provides permitting support for utility-scale solar and wind projects, similar support is not afforded to distributed solar + storage or utility-scale energy storage. Ensuring that clean energy resources have a viable permitting pathway in New York will lower the cost of development for all market participants and ratepayers.

- *Adding transparency and certainty to the interconnection process*, which will streamline the overall development process and reduce interconnection upgrade costs, financing costs and other soft costs. In recent years, the cost of utility distribution upgrades to integrate new distributed energy resources have increased dramatically. In 2024, National Grid updated its distribution upgrade cost estimation methods, which resulted in a ~71% increase to the average estimated cost to interconnect a large distributed energy resource in the utility territory.[13] Additionally, in the last year, multiple community solar developers have taken regulatory action against National Grid in response to utility cost overruns for distribution upgrades or retroactive scope modifications that undermine project feasibility or profitability. Action is needed to protect IPPs and ratepayers from utility cost overruns associated with their *existing* scope of work integrating these new clean energy resources. Expanding the utilities' scope further would exacerbate the existing problems caused by utility cost overruns. Instead, the SSP encourage the Commission to take action on NYSEIA's February 2025 petition that seeks to increase transparency and cost certainty for clean energy distribution upgrades.[14]

- *Driving down interconnection costs through flexible interconnection*, enabling self-performance of distribution upgrades, and proactive planning for both transmission and distribution. Rather than restructuring the ownership rules for clean energy projects, the Commission should seek to lower the cost of building these resources using all available tools and technologies. New York is still using a 20th Century approach to interconnection, resulting in interconnection upgrades that take years to complete and that are at times prohibitively expensive. To their credit, National Grid and Avangrid have both implemented successful flexible interconnection programs that delivered faster, lower-cost interconnection solutions for community solar projects in their territory—and the utilities are seeking to expand these pilots. Additionally, as a condition of the National Grid Joint Proposal that was recently approved by the Commission, National Grid is launching a Self Performance Program that allows IPPs to complete their own distribution upgrades on deenergized lines. These kinds of interconnection reforms will lower costs and accelerate deployment. The SSP encourage the Commission to expand and accelerate these efforts, and to consider the significant potential for distributed energy resources in the context of ongoing proactive planning proceedings. In combination, these interventions could meaningfully lower costs and catalyze additional clean energy resource deployment under the current market construct.

Point 4 is also supported by New York's direct experience attempting to develop UOG in recent years. In 2016, Con Edison filed a petition for *Approval of a Pilot Program for Providing Shared Solar to Low Income Customers* which sought approval for a program that would "combine: the lower costs of solar built

[13] National Grid. National Grid - DG cost estimate revision July 2024.xlsx. Transmitted on July 15, 2024.

[14] Case 24-E-0621. Petition of New York Solar Energy Industries Association Seeking Modifications to the New York State Standardized Interconnection Requirements to Provide Greater Transparency and Cost Certainty for New Distributed Generators and/or Energy Storage Systems 5 MW or Less Connected in Parallel with Utility Distribution Systems. February 2025.

under a "Universal Renewables" (utility owned) model; the utility's ability to work effectively with its low-income customers, community groups, and other interested stakeholders; the development of solar generation on Company-owned roof space and other Company-owned locations for the benefit of customers; and the ability to efficiently apply solar credits to the customer's bill."[15] Con Edison's proposal included "an initial phase to test the pilot program, and a second phase expanding the pilot if it proves to be successful."[16] In August 2017, the Commission authorized Con Edison's Shared Solar Pilot Program, allowing approximately 3 megawatts of UOG on the utility's facilities as a first phase. On July 31, 2021, after four years of effort and at least $1,633,889.56 in expenses,[17] Con Edison filed a letter with the Commission requesting permission to terminate the program without building any of the approved utility-owned low-income solar projects. Con Edison's letter to the Commission requesting permission to terminate the program cited common development challenges including variable interconnection costs, high customer acquisition costs and site-specific real estate challenges; barriers that can be addressed by New York State through policies and programs that benefit the entire market, such as permitting and interconnection reforms. Utilities should not be learning the same lessons, on the backs of ratepayers, that developers know all too well.

Point 5: Revised Utility Incentives are Needed to Deliver Progress toward Climate Act and Affordability Goals

Currently, utilities are strongly incentivized to build new infrastructure, even when lower cost alternatives are available. Through the utility cost-of-service model, the more the utility spends, the more profit they and their shareholders earn. Considering the existing utility incentive structure, it is not surprising that New York utilities are seeking approval to build and own more assets. While this would be a profitable outcome for New York utilities, for the reasons outlined above, it would not be a beneficial outcome for ratepayers who would bear the cost of these resources, including cost overruns and performance risk. Rather than granting New York's utilities authorization to build and ratebase additional assets, we instead encourage the Commission to consider an expansion of performance-based ratemaking, whereby utilities are able to earn additional profit by lowering costs, improving service and enabling progress toward clean energy goals—and likewise are penalized through negative adjustments when they fail to do so. This realignment of incentives will ensure that utilities' efforts to maximize value for their shareholders translate directly into greater value for ratepayers and progress toward New York State's policy goals.

Answers to specific Commission Questions

1. **What, if any, additional regulatory requirements would be needed to ensure effective and fair oversight of utility-owned generation, vertical market power concerns, and information asymmetry?**

For the reasons outlined above, the SSP oppose UOG, specifically because there is no way to ensure effective and fair oversight that would prevent vertical market power and information asymmetry. New

[15] Case 16-E-0622. Petition of Consolidated on Company of New York, Inc. for Approval of a Pilot Program for Providing Shared Solar to Low Income Customers. October 2016.

[16] Case 16-E-0622. Order Approving Shared Solar Pilot Program with Modification. August 2017.

[17] Case 16-E-0622. Consolidated Edison Company of New York, Inc.'s quarterly report for its Shared Solar Pilot Program for the first quarter of 2021. June 2021.

York restructured the market in the late 1990s to introduce competition and limit the electric utility's monopoly to transmission and distribution. Restructuring cleared a path for billions of dollars of private investment in the state. Independent power producers compete for the opportunity to develop generation at the lowest cost while diversifying supply and creating thousands of jobs. Unbundling generation from distribution and transmission increases transparency and oversight, ensures that prices reflect market value rather than being tied to utility cost recovery and guaranteed rates of return. Private investment, increased transparency and competition all benefit ratepayers by delivering reliable electricity at the lowest possible cost, protecting against utility cost overruns and shifting market risk to the developers.
As described in our points above, walking back restructuring by allowing additional utility owned generation will give the utilities an unfair market advantage, chill a robust private market and expose ratepayers to higher costs and increased risk.

Clean energy companies have consistently shown up in New York. Meeting the state's clean energy goals remains a challenge, however, and we appreciate the urgent need to find solutions. Creating a hybrid vertical and restructured market in New York is not the solution. Additional regulatory requirements cannot prevent information asymmetry and an unfair utility advantage; the utilities control grid upgrades as well as interconnection costs and timelines, and therefore invariably have increased visibility into those processes, along with a profit motive to leverage that information and control to favor their projects. No regulatory framework could ensure fair competition between companies that must manage their costs and operations to be profitable, and utility companies who enjoy guaranteed cost recovery at the expense of ratepayers. There is no evidence that utility access to capital can offset the above concerns and drive costs down for ratepayers. Finally, the SSP remind the Commission that the utilities are subject to the same siting and permitting challenges that, along with interconnection costs and supply chain constraints, are the true barriers to bringing clean energy online quickly and affordably.

The only real way to address these concerns is to prohibit utility-owned generation, with the exception of resources that are owned by the utilities' unregulated affiliates, with strong firewalls to ensure these unregulated affiliates do not have access to information that provides them with an unfair competitive advantage. If the Commission were to consider expanding UOG to the regulated utilities despite the concerns outlined above, the SSP recommend that the Commission narrowly limit the program's scope and establish strong guardrails to protect ratepayers and limit market distortion. Some of the necessary guardrails that could *partially* address these concerns include:

- **Requiring that utility shareholders bear 100% of cost overruns.** This is critical to discourage utilities from underbidding in order to win NYSERDA contracts over IPPs, or to get utility-owned generation or storage assets approved in a rate plan, only to increase the project cost over time with change orders and cost overruns, all of which would traditionally be borne by ratepayers through the cost-of-service model. Ratepayer-funded utility cost overruns are antithetical to New York's affordability goals, and the Commission should be seeking to limit this risk rather than exacerbate it by expanding the scope that is eligible for rate base treatment. The most effective way to protect ratepayers from such risk is to prohibit UOG, and to allow the private market to assume these risks, thereby protecting ratepayers.

- **Appointing a shareholder-funded UOG project monitor**, to be employed by the Department of Public Service, (a) to ensure that all costs are properly attributed to the project, thereby ensuring that utility ratepayers are never subsidizing utility cost overruns for UOG, and (b) to ensure that utility-owned projects do not receive preferential treatment in interconnection queues.

- **Requiring that shareholders bear 100% of development risk by prohibiting utilities from adding UOG to their rate base before achieving commercial operation.** This will ensure that shareholders shoulder all development costs for projects that do not achieve commercial operation, protecting ratepayers from undue development risk. Private IPPs currently assume all project development risk on behalf of ratepayers, with NYSERDA incentives and contracts conditional on projects achieving commercial operation. This same ratepayer protection should be included in any UOG scheme if it were to be implemented.

- **Require UOG projects to follow the same rules as competitive projects.** In order to not provide an incentive to the utilities to delay or block changes to the interconnection and rate design paradigms, UOG projects must be subject to the same rules as competitive projects. This includes adhering to all interconnection rules with no ability to jump the queue or avoid upgrade costs. For standalone storage projects, specifically, this includes adhering to all charging rate rules, such as standby charges. The reality is that this will be exceedingly difficult for the Department to enforce with existing levels of staffing, and DPS would need to expand its oversight of the utilities' interconnection queues and operational practices to ensure utilities are not inappropriately favoring their projects over others.

- **Create a mechanism to ensure that utility shareholders bear 100% of performance risk for ratepayer-funded projects.** Private IPPs have a strong incentive to maximize the uptime and performance of their assets. However, under the cost-of-service model, utilities do not have the same incentive, which could result in lower performance for ratepayer-funded, utility-owned assets. Compensation and risk allocation structures would be needed to ensure that utility shareholders bear full performance risk for any UOG. This could potentially be accomplished by reducing the utilities'approved return on equity (ROE) for these assets, and enabling them to only achieve their target return if the asset achieves high performance benchmarks. This performance risk mitigation strategy is critical. However, it could introduce other risks, such as incentivizing utilities to leverage their vertical market power to increase revenues at the expense of ratepayers in order to maximize their profit. This is yet another demonstration of why there are no guardrails that will truly protect ratepayers and other market participants from the risks associated with UOG.

- **Limit the amount or type of projects that can be developed by the utilities.** For example, in Massachusetts, the electric distribution companies (EDCs) may own a small amount of solar generation - but this is limited to specific, small MW caps that must be developed by a date certain, on land owned by the EDCs and meeting specific criteria, and each project must be pre-approved by the state's regulator.[18] New York granted Con Edison similar permission to build and own community solar generation to serve low- to moderate-income customers in 2017, however, the

[18] Massachusetts Department of Public Utilities - Electric Power Division. "Green Communities Act of 2008." Accessed online here.

utility was unable to successfully deploy any of the authorized projects and ultimately requested permission to terminate the program after 4 years and $1.6M in development expenses.

This partial list of guardrails that would be needed to protect ratepayers and other market participants from the negative impacts of UOG demonstrates how challenging and impractical it would be. The simplest way to achieve this goal is to maintain existing rules that limit UOG.

2. **What does an ownership model look like if the clean energy project is owned by and located outside of the utility's service territory?**

The SSP do not object to the current regulatory structure, whereby utilities' *unregulated subsidiaries* are authorized to participate in clean energy project development and ownership on the same terms as other market participants. Unlike their regulated counterparts, utilities' unregulated subsidiaries do not recover costs from captive ratepayers through cost-of-service ratemaking. As a result, unregulated subsidiaries are directly incentivized to minimize costs and improve efficiency, just like other market participants. While this approach is generally acceptable to the SSP, vigilance is required to ensure that there are adequate firewalls between regulated utilities and their unregulated affiliates to protect fair market competition and avoid information asymmetry.

Notably, utilities have access to detailed engineering information regarding their electric infrastructure and control their capital plans— valuable information and control that are generally unavailable to IPPs and other private market participants. Additionally, utilities have wide latitude to include electrical infrastructure in their capital plans, which could result in utilities proposing and prioritizing ratepayer-funded traditional distribution upgrades with the secondary objective of enabling their UOG project to come online at a lower cost. The only way to prevent utilities from unfairly leveraging their asymmetric access to information and their control over their capital plans is to prohibit utilities from building projects in their own service territory, and authorize only utilities' unregulated subsidiaries to develop and own generation and energy storage on the same terms as other market participants.

3. **Would projects be selected through a request for proposal process or other competitive mechanism?**

In theory, a request for proposals (RFP) process could help to protect against the utility's unfair advantage by funnelling all proposed projects through a competitive review. However, even a rigorous, independent-party-run, transparent RFP with robust regulatory oversight cannot protect against the utilities internal grid knowledge of control over critical processes such as interconnection and grid modeling. In addition, utility solicitations generally remain complex, bespoke, and difficult to scale, producing only a limited number of projects relative to system needs. A market-based approach, such as the one used to animate New York's market for distributed energy resources (DER), will increase the speed and scale of deployments, in line with State energy mandates.

As outlined above, any expansion of utility ownership runs the risk of imposing new risks on ratepayers, and it is challenging, if not impossible, to envision a competitive procurement that would enable fair market competition and protect ratepayers from utility cost overruns and performance risk.

a. What is the proposed role of the Commission for oversight of this process?

The SSP do not support expanded RFPs for utility-owned generation. Instead, the SSP recommend that the Commission and DPS prioritize rate design and interconnection reforms that lower the cost of clean energy resources and performance-based ratemaking to align utility profit motives with the public interest. This could be done, for example, by establishing a framework whereby utilities are expected to maintain safety and reliability as a baseline, and rewarded for lowering electricity rates, improving customer service, and enabling clean energy integration, as described in Point 5 above.

If the Commission were to approve any UOG despite these concerns, we strongly recommend that each project go through its own detailed, rigorous review and approval process by the Commission and that extensive guardrails be put in place to protect ratepayers from the cost overruns and performance risk that are inherent to the cost-of-service model.

b. Would projects be developed by the utilities or purchased through build transfer agreements or other mechanisms?

The SSP oppose UOG irrespective of the procurement structure. The SSP remind the Commission that New York's utilities are already authorized to develop, own and operate clean energy assets through their unregulated subsidiaries. The SSP do not object to unregulated utility subsidiaries participating in the market, either by developing DER or large-scale renewables and storage under New York's existing development and compensation frameworks. Under the current construct, New York's investor-owned utilities could even develop/build clean energy assets and then sell them to the New York Power Authority (NYPA) under their new authority to own renewables. Even if the Commission were to find arguments for utility ownership persuasive, the SSP remind the Commission that a form of UOG was recently authorized through the Build Public Renewables Act, and any theoretical benefits of UOG could be accessed through the existing construct.

4. **How would the Renewable Energy Certificates (RECs) that utility owned projects generate be utilized?**

a. Will the utility keep the RECs on behalf of their customers, sold to NYSERDA, sold to other entities such as large volume customers, or some sort of prescribed blend?
There should be no change to the treatment of RECs; projects developed and owned by utilities' unregulated subsidiaries should be treated in the same manner as RECs generated by other market participants.

b. How will the value of such RECs be determined?
The value of RECs generated by utilities' unregulated affiliates should be valued in the same manner as RECs generated by all other market participants.

5. How would utility-owned projects be financed?

With the exception of projects owned by NYPA, as authorized in the Build Public Renewables Act, ownership of renewables and energy storage should only be permitted by IPPs and utilities' unregulated affiliates.

a. If ratepayer funded, how and at what point in the process? Are costs allocated to the utilities rate base, or statewide through the load-share ratio or similar mechanism?

Projects should not be ratepayer funded. Notably, in its current rate case, Con Edison is proposing an approximately $1.6 billion increase in electric revenue and an unprecedented 10.1% Return on Equity, one of the highest in the nation for utilities. This would result in an average electric bill increase of 11.4% at a time when 3.5 million New York City residents (42%) are in arrears and 1.9 million (23%) have experienced utility shutoffs due to inability to pay.[19] Allowing utility ownership of renewables and storage will continue to drive up ratepayer costs at a time when addressing energy affordability is more urgent than ever.

b. If ratepayer funded, how would financial net benefits accrue to ratepayers/customers? Would they go to the customers of record at the time any benefits are realized via a credit (or similar) or remitted to the State for overall clean energy compliance obligations?

The SSP assert that, while it is in the public interest for clean energy projects to be ratepayer supported, they should not be fully ratepayer funded. New York has a long track record of developing successful programs to support clean energy resources coming online through NYSERDA. These programs are partially ratepayer funded; however, they enable IPPs, customers and other market actors to leverage private capital to deploy these clean energy resources. The Commission has demonstrated its declining appetite to support ratepayer-funded incentives, citing concerns about ratepayer impacts and affordability. It is inconsistent for the Commission to authorize ratepayers funding 100% of clean energy projects through an unproven mechanism when the Commission just cut $271M in funding from the NYSERDA NY-Sun program, which leveraged 7.9X the ratepayer contribution in private capital for 2024 incentive reservations[20] and delivers direct utility bill savings to customers. In light of the Commission's concerns regarding the ratepayer impact of clean energy projects, the SSP urge the Commission and the State of New York to prioritize programs that leverage private capital and cost-cutting measures such as permitting and interconnection reforms. These reforms will eliminate market barriers to clean energy deployment, enabling New York to benefit from lower cost clean energy.

With respect to the allocation of financial net benefits to customers, the SSP do not understand what financial net benefits Staff are referencing in the question. Given recent cost overruns for utility interconnection, ratepayer funded transmission & distribution upgrades, and the Con Edison Fox Hills Energy Storage System, it is highly likely that any clean energy resource developed and owned by a regulated utility through their cost-of-service model will be more expensive than a competitive project.

[19] Wilkinson, N., Hernández, D., Salgado, D., Collyer, S., & Wimer, C. (2024, July 18). The Prevalence and Persistence of Energy Insecurity in New York City. Accessed online here.

[20] NYSERDA. Solar Electric Programs Reported by NYSERDA: Beginning 2000. Accessed October 2025.

With regard to benefit sharing constructs, in recent years, the Commission and the NYS Legislature have established multiple benefit sharing mechanisms for clean energy projects: Community Distributed Generation (CDG), Statewide Solar for All (SSFA), and the NYPA REACH program. These programs allow New York to steer a portion of the economic value of projects toward priority customers, such as renters or low-income households. The SSP oppose the creation of any duplicative program, and instead encourage utilities that want to develop clean energy resources in New York to do so using their unregulated affiliates and to participate in existing tariffs and programs.

6. **Who bears the project development risk?**

Ownership of renewables and storage should only be permitted by the utilities' unregulated affiliates, who would be responsible for bearing project development risk. Projects developed by regulated utilities would result in risk being directly borne by ratepayers, which is unacceptable.

7. **What, if any, impact to ratepayers will unsuccessful projects have? How can the utility minimize ratepayer exposure to project development risk?**

Ownership of renewables and storage should only be permitted by the utilities' unregulated affiliates, who would be responsible for bearing risk and costs of unsuccessful projects. Projects developed by regulated utilities would result in risk of unsuccessful projects being directly borne by ratepayers, which is unacceptable.

8. **Are there additional performance, measurement, and reporting requirements a utility-owned generation project should be subject to?**

Utility ownership of renewables and energy storage should only be permitted by the utilities' unregulated affiliates.

9. **Are there other considerations relevant to this inquiry?**

Not at this time.