NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 25-E-0764 - Proceeding on Motion of the Commission to Address New York City Reliability Needs

RESPONSE OF ALLIANCE FOR CLEAN ENERGY NEW YORK, EARTHJUSTICE, NATURAL RESOURCES DEFENSE COUNCIL, NEW YORK BATTERY AND ENERGY STORAGE TECHNOLOGY CONSORTIUM, AND SIERRA CLUB IN OPPOSITION TO PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

Pursuant to 16 N.Y.C.R.R. 3.7(c), Alliance for Clean Energy New York, Earthjustice, Natural Resources Defense Council, New York Battery and Energy Storage Technology Consortium, and Sierra Club respectfully submit this response in opposition to the Petition for Clarification or, in the Alternative, Rehearing of Independent Power Producers of New York, Inc. (IPPNY Petition). Central to the State's energy-related goals is minimizing public health and environmental impacts, in particular, public health and environmental impacts related to climate change which pose a threat to communities across the State, especially disadvantaged communities which already bear a disproportionate burden of the pollution associated with fossil fuel-fired power generation. As set forth below, because the Public Service Commission appropriately directed Con Edison to focus its Request for Information on resources that comply with the renewable and zero emissions statewide electrical demand system requirements set forth in the Climate Leadership and Community Protection Act (CLCPA), because the definition of "zero emissions" has already been extensively vetted and thoughtfully interpreted by DPS Staff, and because clean CLCPA-compliant resources are well positioned to address forecasted reliability gaps in Zone J, the Commission should reject the IPPNY Petition in full.

I. IPPNY's petition should be rejected

In establishing the parameters for this docket, the Commission reasonably chose to prioritize the development of resources that are fully compliant with the state's renewable and zero-emission obligations set forth in the CLCPA. As the Commission explained in its initiating order, reliability needs must be maintained "as surely, as cost-effectively, and as far as possible in compliance with State policies."[1] As detailed below, the New York Independent System Operator (NYISO) has already initiated a Short-Term Reliability Process to address near-term needs and CLCPA-compliant clean energy resources are well-positioned to address any residual reliability gap in Zone J. It would be premature and counterproductive to solicit polluting, non-CLCPA-compliant resources before allowing renewable and zero emission resources with a long-term future in New York to resolve any projected shortfalls.

The final State Energy Plan does not counsel otherwise, and neither overrides nor purports to override the legal requirements of the CLCPA. Moreover, the definition of "zero emissions" has been extensively vetted and the November 2024 DPS Staff proposal–which unequivocally rejected the expansive and counter-textual definition proposed by IPPNY–should control pending any subsequent orders from the Commission.

[1] *See* Order Initiating Proceeding and Directing Reliability Contingency Plan, Case 25-E-0764 (Dec. 18, 2025), at 16 (hereinafter "Initiating Order"); *see also id.* at 19-20 (describing principles for the Reliability Contingency Plan including that "[o]nly non-emitting solutions shall be considered for inclusion in the Plan").

A. The PSC's Order Is Fully Consistent with the State Energy Plan

IPPNY misrepresents the State Energy Plan (SEP) in claiming the SEP somehow requires that the PSC direct Con Edison to consider CLCPA-inconsistent emitting resources. To the contrary, the PSC's directive to consider only "non-emitting" solutions[2] is entirely consistent with the SEP, which itself prioritizes clean solutions consistent with the CLCPA.

The SEP does not—and could not—ignore the requirements of the CLCPA, including the need to transition to 100% zero-emissions technology. As a threshold matter, the State Energy Planning Board has no authority whatsoever to ignore and/or modify the express directives of the State Legislature in enacting the CLCPA. Indeed, the Planning Board does not do so as the SEP is clear in prioritizing clean technology.

As the SEP expressly states, "New York must continue to . . . advance its clean energy objectives"[3] and "first prioritize the continued expansion of clean energy resources, transmission upgrades, increased energy efficiency, integration of distributed energy resources, and growth in demand response participation."[4] To the extent the SEP speaks of temporarily retaining existing combustion generation and/or evaluating whether to invest in its repowering, such action is unambiguously subordinate to the pursuit of true CLCPA-compliant solutions.[5]

The PSC's directive that Con Edison consider only non-emitting solutions is thus entirely consistent with the SEP. Indeed, The PSC's request for "a comprehensive portfolio of solutions that prioritizes and leverages all available clean and non-emitting options, including, but not limited to, demand side management (e.g., energy efficiency, demand response, and virtual power plants, among other potential options), energy storage, distributed renewable resources, and other non-emitting generation resources"[6] highlights the very same technologies promoted in the SEP.[7] If CLCPA-compliant resources can address New York City's projected reliability needs—and as discussed below, they can—the PSC must necessarily prioritize those resources.

[2] The initiating order directed Con Edison to seek "non-emitting" resources and explained that "[f]or these purposes, resources that qualify as 'zero emissions' under the Commission's determinations in Case 15-E-0302 may be considered 'non-emitting.'" Initiating Order at 16, n.17.
[3] State Energy Plan at 65; *see id.* at 51 ("Electrification coupled with clean electricity is expected to be a central pillar of addressing the ambitious economy-wide GHG reduction targets by 2050.").
[4] State Energy Plan at 70.
[5] *Id.*
[6] Initiating Order at 5.
[7] State Energy Plan at 70; *see also id.* at i, 65, 67 (clean energy resources); *id. at* i, 58, 61, 66, 72 (storage); *id. at* i, 58, 61, 66, 70-71 (demand-side resources).

B. The PSC Should Reject IPPNY's Request to Adopt Its Counter-Textual Definition of Zero Emissions and Should Retain the Definition Proposed by DPS Staff for Purposes of the Con Edison RFI

IPPNY additionally requests that the Commission include technologies that it asserts are "zero emissions" even where such technologies do not meet the definition of "zero emissions" proposed by DPS Staff. Because IPPNY's proposed alternative definition is incompatible with the plain language of the CLCPA and was expressly rejected by DPS Staff following extensive public comment and legal analysis, there is no basis at this time for deviating from the DPS Staff proposal.

While the Commission has yet to issue a final order regarding the definition of "zero emissions," the meaning of the term has already been subjected to extensive scrutiny by the Commission and DPS Staff over the past four and a half years. In August 2021, IPPNY filed a petition proposing that "zero emissions energy systems" be defined as "systems, other than renewable energy systems, that generate electricity or thermal energy through the use of technologies that do not lead to a net increase in greenhouse gas emissions into the atmosphere at any time in the process of generating electricity."[8] The Commission opened a comment period and accepted comments on that IPPNY petition through November 2021. In its May 2023 order initiating a zero by 2040 process, the Commission declined to adopt IPPNY's proposed definition and instead solicited comment directly on the question of how the term "zero emissions" in PSL § 66-p(2) should be defined.[9] Later that year, following receipt of the initial stakeholder comments, it once again solicited comment on specific facets of the definition including whether "zero emissions" is distinct from "net zero emissions."[10]

Having received and reviewed the extensive stakeholder comments on the meaning of "zero emissions" in PSL § 66-p(2), including IPPNY's proposed definition, DPS Staff in November 2024 released a proposal interpreting key terms in CLCPA's Section 66-p "zero emission" mandate.[11] Of particular relevance, DPS Staff appropriately rejected IPPNY's counter-textual redefinition of "zero emissions" as "net zero" as well as IPPNY's attempt to disregard emissions associated with the fuel production. As DPS Staff explained, "[a] textual and structural reading of the Climate Act both support the same conclusion, namely that 'net zero' can only be read as meaningfully distinct from 'zero.'"[12] After evaluating the CLCPA's language under multiple canons of statutory interpretation and evaluating the language of Section 66-p in the

[8] Petition of Independent Power Producers of New York, Inc., New York State Building and Construction Trades Council and New York State AFL-CIO for the Establishment of a Zero Emissions Energy Systems Program under the Clean Energy Standard, Case 15-E-0302 (Aug. 18, 2021), at 2.
[9] Order Initiating Process Regarding Zero Emission Target, Case 15-E-0302 (May 18, 2023), at 15.
[10] Notice Seeking Further Comment, Case 15-E-0302 (Oct. 20, 2023).
[11] Department of Public Service Staff Proposed Definitions of Key Terms in PSL § 66-p, Case 15-E-0302 (Nov. 4, 2024) (hereinafter "DPS Proposed Definitions").
[12] *Id.* at 20.

broader context of the Climate Act, DPS Staff concluded that "the Climate Act did not give the Commission discretion to adopt net emissions accounting for power sector resources or resources that generate energy by consuming primary fuels in a way that involves the avoidance of emissions at another time or place or in another sector."[13]

DPS Staff likewise rejected IPPNY's proposed temporal focus on emissions occurring during "the process of generating electricity."[14] DPS Staff explained that "[m]easuring only operation-related emissions would be too narrow because it could allow resources reliant on greenhouse gas emissions-intensive fuel production processes to be dubbed 'zero emissions.'"[15] Instead, DPS Staff proposed that, "when applying the 2040 target, the Commission should treat as cognizable emissions from both a resource's operations and its fuel production process."[16]

DPS Staff's proposed resolution of these issues is plainly correct. The impermissibility of a "net zero" approach is reinforced by the CLCPA's proscription on electric sector sources participating in any "alternative compliance mechanism" that allows netting of emissions rather than direct achievement of the statute's "zero emissions" mandate.[17] Moreover, IPPNY's proposed definition would counterintuitively enable new fossil fuel generators to purport to qualify as "zero emissions" by functionally redefining the term to mean "not more greenhouse gas emitting than the marginal resource." Under IPPNY's proposed definition, power sector emissions could remain stagnant indefinitely, in clear contravention of the State Legislature's direction to eliminate sectoral emissions by 2040.

For these reasons, the Commission should deny IPPNY's petition and reject its proposed definition of "zero emissions." To the extent the Commission deems it necessary to take any action in response to IPPNY's petition, it should clarify that, until it issues a further order on the definitions under P.S.L. § 66-p, the "clean and non-emitting" resources to be prioritized in Con Edison's NYC Reliability Contingency Plan are those that qualify as "zero emissions" under DPS Staff's November 4, 2024 proposal.[18]

C. CLCPA-Compliant Solutions Exist to Resolve Con Edison's Identified Reliability Need

Con Edison's January 2026 Reliability Needs Report,[19] prepared in response to the Commission's Order,[20] identified a capacity shortfall in the New York City 345/138 Transmission Load Area (TLA) beginning in 2032, with an initial deficiency of 125 MW

[13] *Id.* at 22.
[14] *Cf.* IPPNY Petition at 2.
[15] DPS Proposed Definitions at 15.
[16] *Id.* at 16.
[17] E.C.L. § 75-0109(4)(f); *see also id.* § 75-0109(4)(g)(1) & (g)(2); DPS Proposed Definitions at 20-21.
[18] *See* Initiating Order at 16 & n. 17.
[19] Con Edison, "Attachment A: January 2026 Reliability Needs Report," January 20, 2026. Filed in Case 25-02601. Accessed here.
[20] See Case 25-02601, Proceeding on Motion of the Commission to Address New York City Reliability Needs.

growing to a shortfall of 750 MW by the end of the ten-year study period in 2036, as shown in the table below. Notably, this shortfall arises two years later and is of both a smaller magnitude and duration than Con Edison initially presented to the NYISO in its December 2025 preliminary assessment.

New York City 345/138 KV TLA Reliability Needs,
as identified in the Con Edison 2026 Reliability Needs Report

	2027-2031	2032	2033	2034	2035	2036
Peak MW Need	-	(125)	(275)	(400)	(600)	(750)
Hours	-	3	4	5	6	9
Duration	-	- - - 15-16 16-17 17-18 - - -	- - 14-15 15-16 16-17 17-18 - - -	- - 14-15 15-16 16-17 17-18 18-19 - -	- 13-14 14-15 15-16 16-17 17-18 18-19 - -	12-13 13-14 14-15 15-16 16-17 17-18 18-19 19-20 20-21
~MWh by Hour	-	- - - 15-16: 125 16-17: 25 17-18: 50 - - -	- - 14-15: 100 15-16: 275 16-17: 175 17-18: 225 - - -	- - 14-15: 200 15-16: 400 16-17: 300 17-18: 375 18-19: 150 - -	- 13-14: 175 14-15: 375 15-16: 600 16-17: 525 17-18: 575 18-19: 350 - -	12-13: 75 13-14: 300 14-15: 525 15-16: 750 16-17: 675 17-18: 750 18-19: 500 19-20: 150 20-21: 50
Approx. MWh	-	(200)	(775)	(1,425)	(2,600)	(3,775)

There are many CLCPA-compliant means of fully addressing this reliability need; energy storage and transmission solutions show particular promise in addressing the need in a cost-effective and emissions-free way.

First, Con Edison's reliability needs report fails to account for the significant energy storage resources already in late-stage development in New York City. On the distribution system, New York City can reasonably expect at least 644 MW (2,526 MWh) of distributed energy storage to be deployed by 2029 (based on projects that have paid 100% of their utility interconnection costs and contracted with NYSERDA for retail storage incentives, and assuming 30% attrition). On the transmission system, New York City can reasonably expect at least 535 MW (2,100 MWh) of bulk energy storage by 2030 (based on 170 MW bulk projects procured under Con Edison's Energy Storage Deployment Program, in addition to the 1,000 MW Zone J

procurement target of the NYSERDA Bulk Storage Program, assuming 50% attrition). Together, this capacity would meaningfully mitigate Con Edison's projected need.[21]

Critically, while Con Edison's projected shortfall has a duration of longer than four hours beginning in 2034, *sufficient four-hour storage resources could still meet these needs*. Energy storage assets are reservoirs of energy that should be controlled and operated independently; they could be directed to discharge in a cascading fashion or at lower rates to cover extended peak periods. For this reason, the approximately 4,626 MWh of four-hour energy storage expected online in NYC by 2030 could directly address Con Ed's projected 3,775MWh reliability need in 2036, despite the nine-hour shortfall duration. In addition, NYSERDA is currently procuring 8+ hour storage resources that could also address these reliability needs.

New transmission infrastructure is also an effective means of addressing these reliability needs by alleviating critical congestion, connecting remote renewable energy to high-demand areas, and supporting the grid during peak demand. It is crucial to take the steps now to modernize the grid to handle higher demand and climate-driven challenges. The new infrastructure will not only improve reliability, it will also bolster resiliency and help deliver more clean energy into the New York City load pocket.

D. The Broader Grid Planning Context Likewise Belies Any Need to Expand the Con Edison RFI to Include Non-CLCPA-Compliant Resources

This proceeding sits within a broader set of Downstate reliability activities that are already in motion, with distinct roles for the Commission, the transmission owners, and the wholesale system operator. The Commission's December 2025 initiating order deliberately directed Con Edison to "turn over every stone" on a portfolio that "prioritizes and leverages all available clean and non-emitting options" and is "consistent with CLCPA requirements."[22] That directive is not an abstract policy preference; it is the Commission's appropriately chosen process for addressing potential New York City needs while maintaining reliability "as surely, as cost-effectively, and as far as possible in compliance with State policies."[23]

Significantly, any questions of near-term reliability are already being addressed through the Short-Term Reliability Process administered by NYISO, and those solutions will be incorporated into Con Edison's initial NYC Reliability Contingency Plan. The Commission's Initiating Order notes that NYISO issued a solicitation on November 10, 2025, for Short-Term Reliability Process solutions to address Generator Deactivation Reliability Needs identified in

[21] *See* NY-BEST's Whitepaper, "Unlocking Distributed Energy Storage to Address Reliability Needs in New York City," January 2026. Filed in Case 25-02601. Accessed here.
[22] Initiating Order at 16.
[23] *Id.*

the 2025 Q3 Short-Term Assessment of Reliability (STAR) Report, with responses due January 9, 2026, followed by NYISO evaluation and a Short-Term Reliability Process Report designating a solution or combination of solutions.[24] The Initiating Order further requires Con Edison to identify in the initial NYC Reliability Contingency Plan "any NYISO-identified solutions in response to its STAR 2025 Q3 report solicitation that contribute to resolving the NYC needs."[25] There is thus no urgency-driven rationale for deviating from the Commission's SEP-approved clean-first directive.

Moreover, NYISO's 2025–2034 Comprehensive Reliability Plan identifies no actionable reliability needs under existing criteria. That finding likewise supports a measured approach that prioritizes fully evaluating how clean energy, storage, demand-side resources, and transmission solutions can mitigate emerging risks, and ensuring that any subsequent decisions are informed by a complete and transparent understanding of those options.

II. Conclusion

The Commission's clean-first approach is fully consistent with the recently adopted State Energy Plan. The Commission has already established the appropriate sequencing: first, require a transparent and comprehensive evaluation of clean and non-emitting solutions capable of addressing the identified risks. IPPNY's attempt to put fossil resources first and resurrect a counter-textual interpretation of "zero-emissions" that has been rejected by DPS staff is inappropriate. As discussed above, CLCPA-compliant resources are capable of fully addressing Con Edison's identified reliability need and there is no short-term basis for deviating from the Commission's (and the State Energy Plan's) clean-first approach. The Commission should reject IPPNY's petition in full.

Dated: February 4, 2026

[24] *Id.* at 11.
[25] *Id.* at 18.