UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cricket Valley Energy Center LLC and Empire Generating Company LLC *Complainants* V. New York Independent System Operator, Inc. *Respondent*	)))))))))))))	Docket No. EL21-7-000

<u>COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION</u>

Pursuant to Rule 212 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2019), and the Commission's *Notice of Extension of Time* issued October 23, 2020, the Electric Power Supply Association ("EPSA")[1] respectfully submits these comments on the *Complaint and Request for Fast Track Processing* submitted by Cricket Valley Energy Center, LLC and Empire Generating Company, LLC ("Complainants") against the New York Independent System Operator, Inc. ("NYISO").[2] Complainants request that the

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[1] EPSA is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA filed a timely document-less motion to intervene in this proceeding on October 16, 2020.

[2] Cricket Valley Energy Center LLC and Empire Generating Company, LLC, vs. New York Independent System Operator, Inc.*, Complaint and Request for Fast Track Processing*, Docket No. EL21-7-000 (filed October 14, 2020) ("Offer Floor Complaint" or "Complaint").

Commission find that the NYISO Offer Floor Rules are unjust, unreasonable, and unduly discriminatory and direct the establishment of a just and reasonable replacement rate. The complaint seeks replacement of the Offer Floor Rules with an expansive "clean" minimum offer price rule ("MOPR") that applies mitigation to all new and existing resources receiving out-of-market subsidies, regardless of resource type, and that extends across the full New York Control Area ("NYCA"). Complainants request that the Commission act expeditiously and issue an order on or before December 31, 2020.

EPSA has long opined on the damaging distortions to the competitive wholesale electricity markets created by out-of-market subsidies, particularly those as extensive as the ZEC payment scheme in New York.[3] While EPSA has supported mitigation mechanisms for Independent System Operators/Regional Transmission Organizations ("ISOs/RTOs") such as MOPR to protect the wholesale market from those distortions when such arrangements have been implemented by certain states in regional markets,[4] competitive suppliers recognize the need for a more holistic approach to addressing these concerns. A better approach would be to establish a market-based mechanism to achieve the state's emission reduction goals through the competitive

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[3] Cases 15-E-0302 et al., *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Aug. 1, 2016) ("ZEC program").

For ZEC cost analysis, see *Affidavit of David W. DeRamus, PH.D. and Collin Cain, M.SC. on behalf of the Electric Power Supply Association*, Grid Reliability and Resilience Pricing, Docket RM18-1-000, at P 23, Attachment B to *Initial Comments of the Electric Power Supply Association,* (filed Oct. 23, 2017).

[4] *See e.g., Request for Expedited Action from Electric Power Supply Association*, Independent Power Producers of New York vs. New York Independent System Operator, Docket EL13-62-002, (filed Jan 9, 2017);

Comments of the Electric Power Supply Association in Support of Complaint, CPV Power Holdings, Calpine Corp, and Eastern Generation vs. PJM Interconnection, Docket EL18-169-000, (filed June 20, 2018);

Initial Brief of the Electric Power Supply Association, Calpine Corporation vs. PJM Interconnection, Docket EL16-49-000 et al. (filed Oct 2, 2018).

wholesale market. Without such an approach, however, expanding the MOPR to all resources in the NYCA would be necessary to preserve the market as the grid decarbonizes.

As states adopt increasingly aggressive climate and clean energy goals aimed at reducing carbon emissions in the power sector, the role competitive markets can play in decarbonization becomes even more important than it is today and, therefore, expanded mitigation may be necessary in the absence of robust carbon pricing if the grid is to remain reliable and affordable for all consumers. It is critical that stakeholders and market operators develop, and the Commission approve, market-based mechanisms to integrate state environmental policies into the wholesale market on a basis that allows all resources to compete on a non-discriminatory basis to lower emissions at least cost. This also achieves far more sustainable emissions reductions.

New York – a single state ISO – is in a unique situation and particularly well poised to act on the Commission's recent encouragement and move forward with a robust carbon pricing proposal. The ISO has a proposal ready for implementation having been developed, analyzed, and vetted through its stakeholder process in conjunction with other state agencies. Should this carbon pricing mechanism be offered to FERC for review, an expanded regime of statewide market power mitigation may not be necessary.

EPSA supports the development of a sufficient market-based mechanism, likely a carbon pricing program, that will address the existing market distortions as an alternative approach as discussed below. Such an approach would provide a necessary mechanism to address out-of-market subsidies and would lessen or negate the need to develop and implement expanded mitigation rules. A market-based mechanism such as carbon pricing will provide a durable regulatory framework to serve the dual purpose of achieving state policy goals while preserving the significant benefit of the competitive wholesale market. As explained in the complaint, in the absence of a market-based approach, the implementation of a clean MOPR-type mitigation would protect the wholesale market.

I. COMMENTS

Complainants ground their concerns in extensive evidence of the impact of the uneconomic retention of existing resources on the NYISO capacity market through out-of-market subsidies covering thousands of MWs outside of the downstate zones (New York City and G-J Localities) which are protected by the ISO's Offer Floor Rules. New York offers a prime example of the proliferation of these type of arrangements over the past several years and the resulting significant threat to the integrity and effectiveness of the wholesale markets.

Quite simply, out-of-market subsidy payment programs that ensure the viability of preferred (but otherwise uneconomic) resources do so to the detriment of all other resources that rely on the market. In New York, state agencies hold 12-year long contracts to financially support three nuclear facilities which were determined not to be needed to maintain reliability, with a combined generating capacity of 3,347 MW at a cost of $462 million per year,[5] facilities which had proven to be at economic risk either through notice of retirement or a demonstration that expected revenues would not cover anticipated costs.[6] That state-sponsored subsidization results in below-cost

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5 Complaint, p. 16.
6 *Id.*

offers from the subsidized resources, exerting downward pressure on the NYCA clearing price for all other resources.[7]

This deleterious market impact is well-documented in an array of proceedings and Commission orders past and present before the Commission across the ISOs/RTOs. There is ample evidence that an out-of-market payment structure is unsustainable as it undermines the competitive wholesale electricity market which reevaluates system needs on a minute-by-minute basis to ensure power demand is consistently and reliably met with the most cost-effective mix of generation, considering numerous constraints. Further, analysis demonstrates that targeted one-off approaches and subsidies are very costly yet are minimally effective at reducing emissions. For example, Energy and Environmental Economics, Inc. ("E3") studied PJM carbon reduction policies recently and concluded, "E3's modeling consistently shows the inefficiency of current policies that aim to reduce GHG emissions by subsidizing specific technologies or in-state resources. To improve policy outcomes, E3 sees significant value in more technology-neutral approaches, such as carbon pricing or CES programs, that do not limit the set of eligible tools for GHG reductions."[8]

It is the wholesale market operator, NYISO, that is tasked with maintaining reliability for the short and long term. The NYISO does so in the most cost-effective manner, whereas out-of-market subsidies saddle consumers with the excessive costs

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7 Shanker Affidavit, P 42, 44.

8 Energy and Environmental Economics ("E3"), *"Least Cost Carbon Reduction Policies in PJM,"* (October 28, 2020), available here: https://www.ethree.com/least-cost-carbon-reduction-in-pjm/. From the report at p. 54, "Current [PJM] state policies, as represented in the BAU [Business as Usual] scenario, appear largely inefficient at reducing GHG emissions today. E3's BAU scenario shows additional system costs of over $3 billion per year by 2030, or $50 per person each year across the 65 million customers served by the PJM system today, for a 12% reduction in net GHG emissions. However, major GHG reductions are viable at low total cost. A minimal carbon price applied across PJM, as an example, could reduce systemwide emissions by over 35% by 2030 from today's levels at near zero net cost."

of these state payment programs. The organized wholesale market – the ISO – is the mechanism to appropriately value resources; it therefore is the appropriate entity to incorporate into the market the state's climate objectives or incorporate comprehensive mitigation rules that protect the markets from price distortions where they are created by out-of-market payments.

That situation noted, more states are adopting increasingly aggressive environmental goals. New York in particular has long been a leader on establishing an ambitious emissions reduction policy and has codified its goal of 70% renewable energy by 2030 and cutting greenhouse gas emissions 85% by 2050 in the Climate Leadership and Community Protection Act ("CLCPA").[9] Meeting these challenging goals requires a sustainable framework that signals and supports the resources – new and existing – that can achieve climate objectives while maintaining a reliable grid with just and reasonable rates. All resources and technologies should be eligible to offer their service and attributes to the system on a non-discriminatory basis.

A durable market design requires a clear, sustainable pathway to achieve New York's environmental goals within the wholesale market operated by NYISO. EPSA supports establishing a robust price on carbon over as large a region as possible to provide the best path forward for states to achieve their clean energy goals within a competitive market framework. If the goal of New York's policy is to cost-effectively reduce harmful emissions in an effort to meaningfully address climate change, all resources should have the same incentive to contribute to achieving that goal; said another way, any ton of carbon dioxide or other GHG emissions avoided is a ton

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[9] *The Climate Leadership and Community Protection Act,* signed by New York Governor Andrew Cuomo, July 18, 2019, *see*: https://climate.ny.gov/.

avoided, regardless of fuel source or technology type, and should be rewarded for its contribution to emission reductions. Establishing a comprehensive wholesale market design which imposes a sufficient value on carbon emissions and internalizes that value in pricing and dispatch is the best means to achieve this end and reconcile the tension between state policies and federal power markets.

New York is in a unique situation to implement a carbon pricing regime that achieves these goals. In its report on the impacts of a NYISO carbon price, the Analysis Group summarized, "A carbon price in the NYISO markets can help deliver New York's clean energy transition in faster, cheaper, more reliable, more efficient, and more creative ways. This is the core part of the value proposition of a NYISO carbon pricing mechanism."[10]

New York is also well-poised to move forward with a carbon pricing regime at an expeditious pace. The ISO already incorporates Regional Greenhouse Gas Initiative ("RGGI") allowance costs in energy market offers as part of the marginal cost of energy production. While RGGI at its current levels has not proven sufficient to disincent out-of-market actions taken by the state, it has demonstrated how a price on emissions can be incorporated into wholesale prices. Thus, NYISO moved forward to compile extensive analysis and develop a draft proposal to establish a carbon price through the Integrating Public Policy Task Force ("IPPTF") which brought stakeholders, market participants, the New York State Department of Public Service, and the New York State Research and Development Agency ("NYSERDA") together with the ISO "to explore concepts and proposals for incorporating the social cost of carbon emissions in

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10 Analysis Group, *Clean Energy in New York State: The Role and Economic Impacts of a Carbon Price in NYISO's Wholesale Electricity Markets*, October 3, 2019, ("Analysis Group Report"), p. 2.

wholesale energy markets to better harmonize the state's energy policies and the operation of those wholesale markets."[11]

As a single-state ISO, New York's carbon pricing concept is state-determined and supported by analysis[12] demonstrating that this vehicle can achieve sustainable environmental progress within New York. While a more comprehensive price on carbon emissions than that offered by RGGI may require additional market design reforms, establishing those values at a sufficient level as a part of the ISO energy market would send the signals necessary to reduce carbon emissions across the entire portfolio of resources through investment in new resources or improvements to existing resources to reduce their emissions profile. And importantly for this proceeding, these non-discriminatory and non-preferential signals should phase out and replace the one-off out-of-market subsidy payments currently in effect.[13] As proposed by NYSERDA and adopted by the New York Public Service Commission, the price of the ZEC payments is re-calculated every two years over the course of the twelve-year contracts in order to reflect forecasted Zone A energy prices and Rest of State capacity prices during each subsequent two-year tranche. If those forecasted prices increase because of a market-wide carbon program, the ZEC payments will decrease. Such price changes can be impacted by RGGI or fuel cost changes and would certainly be affected by the addition

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[11] *IPPTF Carbon Pricing Proposal*, Prepared for the NYISO Integrating Public Policy Task Force, December 7, 2018, p. 3.

[12] Analysis Group Report; *see also,* The Brattle Group, *Pricing Carbon into NYISO's Wholesale Energy Market to Support New York's Decarbonization Goals*, August 10, 2017.

[13] NYISO website, *Carbon Pricing in Wholesale Energy Markets: Frequently Asked Questions,* April 16, 2020: "Analysis of the NYISO's carbon pricing concept shows that introducing a carbon price into wholesale markets will reduce the cost of RECs and ZECs as facilities eligible for these subsidies are able to realize greater revenues from the NYISO's energy markets. In fact, the analysis concludes that the cost of ZECs could ultimately be eliminated without jeopardizing the economic viability of the nuclear facilities currently receiving those payments."

of an explicit robust carbon price. Therefore, as a state-determined carbon price impacts energy market revenues of New York state resources, the ZEC program could and should be phased out based on the results of the carbon pricing regime.[14] This aligns investment signals which are currently being suppressed with those resources that ensure reliable operation of the electricity system while addressing climate goals.

While the Commission has expressed reservations in directing the implementation of a carbon price in wholesale markets, it may "encourage efforts to incorporate a state-determined carbon price in RTO/ISO markets."[15] Having initiated a critical national discussion on carbon pricing at its September 30th technical conference on the issue, a robust record is being developed that establishes the legal authority of FERC to consider and approve a NYISO proposal submitted for review under FPA section 205 and the benefits of implementing a carbon price in the wholesale markets to provide a way to meet the climate challenge and move past the current tension between state environmental policies and federally jurisdictional markets. At that conference, NYISO President and CEO Richard Dewey agreed that carbon pricing can address state environmental policies saying, "The wholesale energy market would harness the power of competition to encourage the investment and innovation needed to meet the State's CLCPA mandates."[16] He further explained,

> However, the economic decisions and wholesale market impacts of resources with REC or ZEC contracts can undermine the investment and

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14 ZECs Program implementing Clean Energy Standard ("CES"). *See* CES Filings, Orders, and Reports here: https://www.nyserda.ny.gov/All-Programs/Programs/Clean-Energy-Standard/Important-Orders-Reports-and-Filings/Filings-Orders-and-Reports.

15 Carbon Pricing in Organized Wholesale Electricity Markets, *Notice of Proposed Policy Statement,* 173 FERC ¶ 61,062, (issued October 15, 2020), P 7.

16 *Opening Remarks of Richard J. Dewey on Behalf of The New York Independent System Operator, Inc.*, Carbon Pricing in Organized Wholesale Electricity Markets, Docket AD20-14-000, September 30, 2020 Technical Conference, Panel 2, p. 4.

> operational signals and decisions for other resources that rely solely on the wholesale markets and are necessary to maintain the reliable operation of the grid and economic efficiency of the markets. NYISO market rules today utilize mitigation tests and rules to preserve the integrity of the investment signals impacted by certain out of market payments.[17]

As attested to by the record of the Commission's carbon pricing technical conference and substantiated in extensive data and analysis,[18] establishing an ISO/RTO carbon pricing mechanism is the most durable and effective way to address climate concerns and facilitate an evolving resource mix while maintaining the integrity and reliability of the organized wholesale electricity market in New York. It is in the hands of the state of New York and the NYISO to exchange a strong MOPR mitigation regime for a meaningful market-based carbon pricing program that is sufficient to avoid undue discrimination and the distortion to competition created by out-of-market subsidies.

The current regime of out-of-market subsidy payments to uneconomic preferred resources is damaging to the ISO market construct and therefore all other resources serving New York consumers. Expanding mitigation may be necessary if a market-based alternative is not finalized by the state and the ISO, though competitive suppliers

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17 *Id*., p. 3.

18 *See e.g.,* Matt Butner et al., "Carbon Pricing in Wholesale Electricity Markets," Institute for Policy Integrity, New York University, March 2020; https://policyintegrity.org/files/publications/Carbon_Pricing_in_Wholesale_Electricity_Markets_Report.pdf;

Robert N. Stavins, Todd Schatzki and Rebecca Scott, "Transitioning to Long-Run Effective and Efficient Climate Policies," Resources for the Future, April 2019, https://media.rff.org/documents/WP_19-10_Stavis_Schatzki_Scott.pdf;

Sue Tierney and Paul Hibbard, The Analysis Group, "Clean Energy in New York State: The Role and Economic Impacts of a Carbon Price in NYISO's Wholesale Electricity Markets," October 3, 2019, https://www.analysisgroup.com/globalassets/uploadedfiles/content/news_and_events/news/2019-analysis-group-nyiso-final-report.pdf;

Navigant Consulting, Inc., "Price Signals and Greenhouse Gas Reduction in the Electricity Sector," prepared for the COMPETE Coalition, 2009.

want to see markets move beyond this approach. The possibility of expanding mitigation to protect the wholesale market should serve as a clear indicator to New York that a comprehensive carbon pricing approach is the necessary next step for the NYISO market so that it can integrate emerging environmental goals as seamlessly as possible.

II. CONCLUSION

WHEREFORE, EPSA urges the NYISO to finalize its carbon pricing proposal or another market-based mechanism that sufficiently addresses the out-of-market subsidies and submit that for approval from FERC. Such an approach would provide the necessary mechanism for addressing out-of-market subsidies and would lessen or negate the need to develop and implement expanded mitigation rules. In the absence of a market-based approach, the implementation of a clean MOPR-type mitigation would also protect the wholesale market.

Respectfully submitted,

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Dated: November 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., November 18, 2020.

N. Bagot

Nancy Bagot, Senior Vice President