

# nyecc

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Re: Role of State Authorities in Renewable Generation – Hearing  
Questions Response

Dear Assembly Chairs:

On July 28, 2022, during testimony and Q&A with regard to the Role of State Authorities in Renewable Energy Generation, several questions were asked of Ben Wallack (representing the New York Energy Consumers Council) for which he did not have NYECC's answers at that time and offered to provide NYECC's answers subsequently. Below are responses to several of these questions asked by committee members.

**Question: NYECC members are large real estate companies, so they would be against NYPA owned renewables, correct?**

The New York Energy Consumers Council (NYECC) is a diverse group of stakeholders who are among the largest utility customers in New York City, including hospitals, colleges, governmental agencies, financial institutions, and real estate organizations. The organization's mission statement sets forth our goal "to realize a sustainable, environmentally responsible and equitable energy future for the region that provides for safe and reliable generation, transmission, and delivery of energy at the lowest possible price for our members." This goal is aligned with the needs of all ratepayers, including lower and moderate income New Yorkers.

NYECC believes that there are legitimate policy reasons why New York State utilities should not own renewable energy assets. These reasons include the impact on competition, questions about the ability of these entities to rapidly develop generation projects, and the long-term cost impacts on ratepayers.

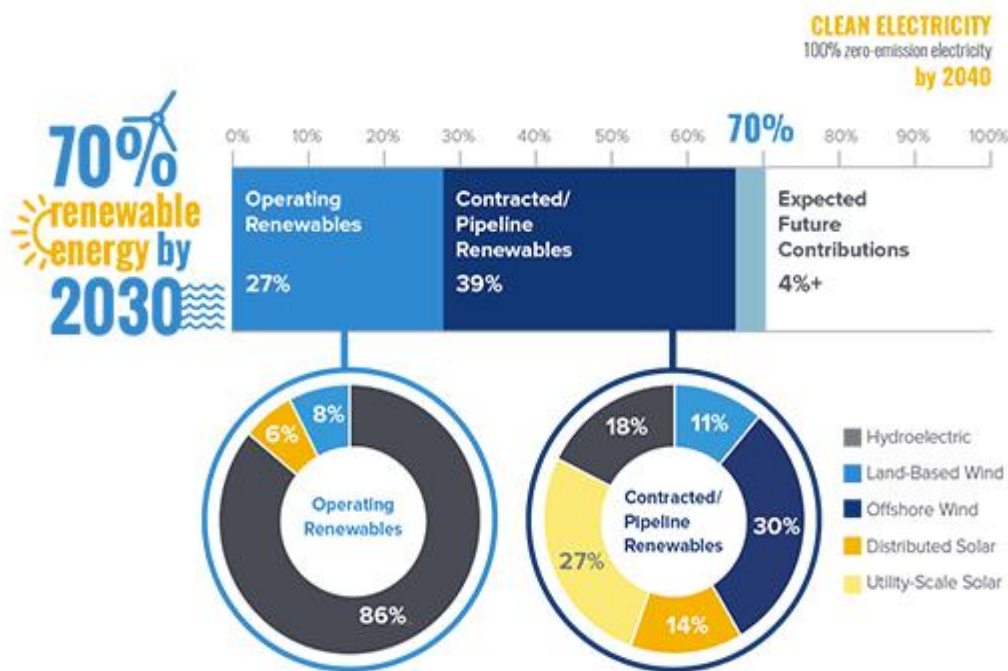
At the same time, this does not mean that NYECC or its members are opposed to the rapid deployment of renewable energy generation and transmission assets in New York. Indeed, NYECC has supported the State’s Tier 4 and Offshore Wind programs and has historically supported reform efforts to streamline permitting and regulation that has inhibited the deployment of renewable energy generation projects in New York.

**Currently wind and solar are 4% of generation. In 2008, they represented 2%. With very little progress since 2008, why do we still want to rely on the market?**

Since the Climate Leadership and Community Protection Act (Climate Act) was signed into law in 2019, there has been significant progress in moving toward a future of renewable energy in New York State. The expansion of New York’s Clean Energy Standard (CES) was codified under the Climate Act in which 70% of New York’s electricity will come from renewable energy sources such as solar and wind by 2030.

On the day before the hearing, on July 27, 2022, Governor Kathy Hochul announced the third competitive offshore wind request for proposal, seeking enough clean power to run at least an additional 1.5 million homes.

Per NYSERDA, combined with the existing baseline of renewable facilities in New York, the current pipeline of **renewables already under contract and in development projects** will power 66% of New York’s electricity once operational. <sup>1</sup>



Credit: NYSERDA Progress Toward Renewable Energy Goals

**Where is the data to support not having NYPA build renewables?**

<sup>1</sup> <https://www.nysERDA.ny.gov/All-Programs/clean-energy-standard>

There are several reasons why NYECC believes that NYPA should not build renewables. As a primary matter, NYECC shares the belief of NYPA's Interim President and CEO Justin Driscoll that NYPA is not best suited to develop renewables. According to a summary of his testimony to the Assembly, "NYPA cannot develop renewable energy more cheaply than private developers and would not be able to access state or federal tax credits if they did because the utility does not pay taxes." Further, Driscoll said the bill's 'mandates' — including those directing NYPA to develop renewable energy projects and provide energy services, and limiting what NYPA may charge — 'are simply unworkable.'"<sup>2</sup>

1) NYPA has not been in the business of building generation for the past 13 years.

"NYPA has not built a new power plant in over 13 years and, instead, has successfully obtained its new power supplies through competitive procurement and from the competitive wholesale electricity market. New Yorkers have directly benefited from the innovative technologies private companies have used to dramatically reduce emissions and improve fuel efficiency by 30 percent, all while enhancing reliability, through competition between private developers — an unthinkable outcome under the previous model."<sup>3</sup>

As such, NYPA is not well positioned to build, own and maintain new renewable generation facilities. Furthermore, as an organization that represents ratepayers, NYECC is concerned about the ability of NYPA to do so in a cost-competitive manner. Indeed, a 2001 NYS Comptroller's report regarding NYPA's previous efforts to build generating plants found that "NYPA's decision to build the plant was based on unreliable cost estimates. **If these cost estimates had been more accurate, NYPA's analyses may have indicated that it would not have been cost effective to proceed with this particular option for obtaining additional generating capacity in New York City.** Cost estimates rose from \$375 million in 1999 to \$650 million in 2002; an increase of \$275 million."<sup>4</sup>

2) NYPA's failures with regard to the State's EV Charging Rollout also does not bode well for NYPA to cost effectively build new generating plants.

According to the NYS Comptroller's Office Report, issued February 4, 2022,<sup>5</sup> it was determined that NYPA:

- did not place the Charge NY and Charge NY 2.0 charging stations in locations that supported the programs' intentions. For example, NYPA placed public charging ports in only 32 of the 62 counties in the State. We also noted that counties with a high number of EVs have relatively few public charging ports.
- did not review and analyze usage data for charger placement or use outreach efforts to encourage EV charger installation by its customers.
- did not complete any of the planned projects for phase 1 of the EVolve NY program by its deadline of the end of 2019.

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<sup>2</sup> <https://www.utilitydive.com/news/nypa-new-york-renewable-driscoll-legislature/628421/>

<sup>3</sup> <https://www.ippny.org/page/legislative-memos-63/news/memorandum-in-strong-opposition---parts-ff-and-gg-of-a9508--s7508-621.html>

<sup>4</sup> <https://web.osc.state.ny.us/audits/allaudits/093004/01s64.pdf>

<sup>5</sup> <https://www.osc.state.ny.us/state-agencies/audits/2022/02/04/selected-management-and-operations-practices>

This track record raises concerns about whether NYPA can implement a renewable generation development program in a timely manner.


- 3) Allowing NYPA (and other utilities) to build and operate renewables likely will limit competition and lead to higher rates for ratepayers.

As consumers of energy, NYECC members care deeply about the cost of power in New York. With this in mind, our members have found that electricity deregulation has broadly been beneficial as it has promoted price competition by increasing market competition.

The State of New York's Public Services Commission's Statement of Policy Regarding Vertical Market Power,<sup>6</sup> further supports not allowing NYPA (or any utility) to build and own generation, as further described in Schedule 1 to this letter.

Thank you for considering these points.

Sincerely,



Diana Sweeney  
Executive Director

cc: Jackson Ward Fischer, Legislative Director, liaison – Office of Assemblymember Epstein  
Dan Campanelli, Chief of Staff – Office of Assemblymember Carroll  
Elle Bisgaard-Chirch, Chief of Staff, Legislative Director – Office of Assemblymember Mandami  
Tony Cao, Chief of Staff – Office of Assemblymember Kim  
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Stephanie Amann, Esq., Legislative Counsel – Office of Assemblymember Paulin  
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Sharon Groves, Legislative Director – Office of Assemblymember Cusick  
Steve Liss, Legislative Director – Office of Assemblymember Englebright  
Matthew Henning, Policy Analyst - Office of Assemblymember Paulin  
Tommy Roell, energy analyst at Program and Counsel

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<sup>6</sup> 96-E-0900, et al. - In the Matter of Orange & Rockland Utilities, Inc.'s Plans for Electric Rate Restructuring Pursuant to Opinion 96-12, Statement of Policy Regarding Vertical Market Power, Issued July 17, 1998, Appendix I, pp. 1-2.

## Schedule 1

The State of New York's Public Services Commission's Statement of Policy Regarding Vertical Market Power, dated July 17, 1998, further supports not allowing NYPA (or any utility) to build and own generation. It is still the Commission's Policy that there is a rebuttable presumption that ownership of generation by a T&D company affiliate [and by extension the T&D Company] would unacceptably exacerbate the potential for vertical market power. To overcome the presumption the T&D company affiliate would have to demonstrate that vertical market power could not be exercised because the circumstances do not give the T&D company an opportunity to exercise market power, or because reasonable means exist to mitigate market power. Alternatively, the T&D company would need to demonstrate that substantial ratepayer benefits, together with mitigation measures, warrant overcoming the presumption.

The evidence here is not only that the presumption has not been overcome, but that it is to the contrary as reflected by NYPA's own CEO (see NYPA CEO comments in NYECC's letter and in footnote 3).