



July 28, 2023

**SUBMITTED VIA EMAIL & U.S. MAIL**

New York Independent System Operator  
10 Krey Boulevard  
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DeveloperSolution@nyiso.com

Re: July 20, 2023 Statement Regarding Identification of Near-Term Reliability Need for the 2023 Quarter 2 Short-Term Assessment of Reliability

Dear New York Independent System Operator,

We submit these comments to express concerns with the New York Independent System Operator (NYISO) July 20, 2023 Statement Regarding Identification of Near-Term Reliability Need for the 2023 Quarter 2 Short-Term Assessment of Reliability (the “July 20, 2023 Statement”). We are deeply concerned that communities most directly affected by the one specific recommendation NYISO makes in its July 20, 2023 Statement – to keep dirty, polluting power plants online longer than envisioned – have not been provided enough time, information, or context to provide meaningful comments.

The July 20, 2023 Statement raises a likelihood that to resolve the projected reliability shortfall in 2025 and possibly in 2026, NYISO may extend the operation of harmful peaker plants scheduled to close in May 2025 by as much as four years. Such an outcome would disproportionately cause continued pollution in overburdened communities designated as “disadvantaged communities,” and would be inconsistent with state law, most specifically, the CLCPA’s Section 7(3)’s statutory mandate for state agencies (who must implement NYISO’s directives) to reduce emissions that disproportionately burden disadvantaged communities and to prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.<sup>1</sup> We are concerned that the July 20, 2023 Statement failed to sufficiently highlight the importance of avoiding extending the operation of these polluting peakers and lacked detailed discussion of other non-emitting solutions expressly authorized as potential solutions—such as demand response or the pursuit of rapid adoption of battery storage resources.

In the context of New York’s energy transition, NYISO’s statements provide a signal to stakeholders and communities of how seriously the state is taking the CLCPA’s climate and equity mandates. The signal from the July 20, 2023 Statement is at best confusing, and at worst signals to New York’s most overburdened communities that they may once again be sacrificed. NYISO must do better in this moment. NYISO’s statements, analyses and solicitations must enable state agencies to comply with the CLCPA, do everything possible to avoid keeping peaking power plants online past 2025, and as described below, work with utilities and state agencies to incentive and maximize the quick deployment of non-wires alternatives, clean energy and storage, demand response and demand side/load management,

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<sup>1</sup> CLCPA § 7(3). Beyond statute, it is the policy of the state to do this as soon as is feasible. For example, Governor Hochul signed into law new cumulative impacts and environmental justice legislation, which will require an analysis of disproportionate pollution impacts and measures to reduce disproportionate burdens. *See* Press Release, WE ACT for Env’t Justice, Governor Hochul Signs Landmark Environmental Justice Legislation Reducing the Cumulative Impacts of Pollution on Disadvantaged Communities (Dec. 31, 2022), <https://www.weact.org/2022/12/governor-hochul-signs-landmark-environmental-justice-legislation-reducing-the-cumulative-impacts-of-pollution-on-disadvantaged-communities/>.

etcetera, as detailed below. We support the PEAK Coalition’s submission as well as its public statements on this topic.<sup>2</sup>

## **Equity & Procedural Concerns with the July 20, 2023 Statement**

### ***Cursory Statement with Minimal Explanation and Conclusory Findings Perpetrates Energy Injustice That The Peaker Rule And The CLCPA Were Enacted To Address.***

NYISO’s July 20, 2023 Statement and upcoming solicitation have high stakes for people in the neighborhoods near the peakers slated to close in May 2025. Yet NYISO has provided a brief and generic notice of the potential for extended operation of some of the state’s dirtiest and most harmful power plants for up to four years past the date by which they are currently scheduled to retire by law, and just one week for public comment on that notice. Providing one week for those most impacted by the July 20, 2023 Statement to read, digest, and respond—especially for the communities most overburdened and directly impacted by NYISO’s sole identified solution—perpetrates energy injustice that the Peaker Rule and the CLCPA were enacted to address. Key data from prior NYISO reports that inform the July 20, 2023 Statement, or easily-accessible supporting documentation, or further context – all would be beneficial for impacted communities to be able to respond and comment.

In addition, NYISO’s open access transmission tariff requires that it provide “a full and supported written explanation,” including “the circumstances that generated that need, and an explanation of why the need was not identified earlier,”<sup>3</sup> NYISO has instead provided only the barest explanation of this incredibly complex situation, full of unexplained technical terms, conclusory findings lacking any detail as to supporting documentation of the underlying modeling, assumptions, or alternatives considered, and makes only passing reference to relevant statutory and tariff requirements without citations, reference points, or context.

For example, NYISO’s July 20, 2023 Statement:

- Concludes that “with additional peakers unavailable, the transmission system will not be able to securely and reliably serve the forecasted demand in New York City” (p2) even though this remains to be seen from the solicitation.
- Concludes that NYC “is deficient by as much as 446 MW for a duration of nine hours on the peak day...when accounting for forecasted economic growth and policy-driven increases in demand” (p2) without explaining what assumptions or modeling led to this or providing specific citations to supporting materials.
- Recognizes there are uncertainties in key assumptions, without providing the margins of error or how the numbers might change under low to high modeling. (p2)
- Attributes change in security margin to a baseline increase of 294 MW but fails to provide details on this (only a reference to the Gold Book without hyperlinks to ease in locating materials) and fails to explain why a 294 MW increase has now led to a 446 MW shortfall. (p2)
- Claims to have consulted with Con Edison on whether alternative operating procedures could address identified need and that no procedure or update was identified without any detailed explanation of what it or Con Edison considered and rejected or why (pp 2-3)
- Makes reference to authority under its tariff to “solicit a regulated solution from Con Edison” and “market-based and other permitted solutions...consistent with [its tariff]” without explaining

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<sup>2</sup> PEAK Coalition Statement on NYISO’s Q2 STAR Report (July 14, 2023), <https://www.cleangroup.org/wp-content/uploads/PEAK-Coalition-Statement-on-NYISOs-Q2-STAR-Report.pdf>

<sup>3</sup> NYISO Open Access Transmission Tariff (“NYISO Tariff”), Section 38.3.6.2.2, <https://nyisoviewer.etariff.biz/ViewerDocLibrary/MasterTariffs/9FullTariffNYISOOATT.pdf>.

what any of this means in accessible language (p3). Also fails to note that the cited provision explicitly authorizes consideration of real and fast alternatives to more, harmful, fossil generation – namely transmission, demand response, and clean generation as a resource. It is also imperative to explain or explore in detail the potential of all solutions to fill the gap *without* simply extending the status quo operation of NYC’s peaker plants.

- Notes that it “may designate certain units, in sufficient quantity to protect reliability, to remain in operation for an additional two years ... with the potential of an additional two-year extension” (p3) without discussion of which units this might be, what a “sufficient quantity” would be, why it would grant a full 2 year extension without acknowledging other resources that are scheduled to be online before that time. For example, NYISO could provide probable scenarios or likely hypotheticals now that provide reassurance that NYISO will actually squeeze every last drop out of every alternative to violating Section 7(3) of the CLPCA via extended peaker plant combustion.

While NYISO asserts that it will examine “proposed solutions,” the only potential solution it actually discusses in specificity in its July 20, 2023 Statement is the continued operation of the harmful peaker plants that are currently set to retire in 2025. NYISO fails to discuss with specificity other significantly-less-harmful options, such as demand response or rapid build out of cleaner generation resources, nor does it provide detailed assurances of how it would work with affected communities to minimize impacts from a last resort use of any peaker plants. While NYISO does state that extending peaker plant operation would be “a last resort,” the lack of details about how potential alternatives could resolve the anticipated shortfall, and NYISO’s failure to acknowledge the seriousness and inequity of the potential harms that would ensue should peaker operations be extended, are troubling. We strongly encourage NYISO to provide greater specificity around potential alternatives and to work closely with all stakeholders — including affected communities —to do all it can to avoid having to exercise this option.

To that end, we are also concerned that NYISO is presenting information related to its projection of a reliability shortfall in a confusing way for the public and for impacted communities. The largest concern is that there is no information on load management or the load forecasts, or the range of assumptions that can impact the conclusion. There should also be an explanation that Clean Path and several offshore wind projects have been delayed, including by state actors bound by CLCPA Section 7(3), leading to the projected 2025 shortfall.

### **Additional Concerns with the July 20, 2023 Statement**

#### ***The importance of quickly implemented demand/load planning, and the lack of information on the potential for this solution***

As all are aware, the safest and fastest mechanism to avoid NYISO’s worst case scenario is reducing energy waste via demand response, demand side management, and energy efficiency. All options to make demand response and energy efficiency improvements in the Con Edison service territory must be accelerated and fully maximized in the two years before the Summer 2025 hypothetical peak to mitigate both disproportional impact and collective GHG emissions, both of which are unacceptable and which would violate both Section 7(2) and 7(3) of the CLCPA. However, the July 20, 2023 Statement does not provide any detail about the modeling it did for this or the potential for this solution to be maximally deployed, nor does it provide specific citations to supporting materials.

***The importance of quickly implemented non-transmission solutions or non-wire alternatives, and the lack of information on the potential for these solutions***

Similarly, it is not clear from the July 20, 2023 Statement what options NYISO and Con Ed reviewed in terms of maximal optimization of non-transmission solutions or non-wire alternatives. It is imperative to provide details to the communities most impacted the specifics as to what is envisioned for non-transmission solutions or non-wire alternatives and what can be maximized and incentivized in the very near term.

***The importance of quick deployment of battery storage, and the lack of information on the potential for these solutions***

Quickly-deployed battery storage, combined with enhanced demand response management and load management, may be able to meet much of the 2025 peak demand forecast deficiencies over the next two years. Several large-scale battery storage projects at the sites of peakers retiring under the Peaker Rule have been approved and may be up and running by 2025, such as Eastern Generation’s 350 MW Luyster Creek Energy Storage Project.<sup>4</sup> Additional battery storage is mandated under the CLCPA, which explicitly directs the Public Service Commission to deploy storage so as to reduce reliance on fossil-fueled peaking units in disadvantaged communities.<sup>5</sup> It is explicitly the policy of New York State, as highlighted by Governor Kathy Hochul in the 2022 State of the State address, to support “renewable development that directly supplants dirty, fossil fuel power plants, especially in communities that have historically been subjected to the negative health effects of fossil fuel-based electric generation.”<sup>6</sup>

Implementing large scale battery storage on an expedited basis in NYC can address a significant portion of peak demand. Examples going back nearly a decade also demonstrate the viability of battery storage instead of and/or with fossil generation as a solution to reduce peak operating times and emissions.<sup>7</sup> It is imperative that NYISO, developers, and state agencies fast track this deployment.

As you are aware, NYPA has studied the option of adding battery storage to its existing peakers, which are not affected by the Peaker Rule, and committed to it nearly two and a half years ago.<sup>8</sup> In its study, NYPA found that adding battery storage, whether or not it fully displaces the gas generation, would reduce peak load and have significant CO<sub>2</sub> and NO<sub>x</sub> emissions reductions that would benefit the surrounding communities.<sup>9</sup> NYPA also issued a request for proposals to develop battery storage projects

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<sup>4</sup> Andy Colthorpe, *Eastern Generation Gets Permit for 135MW Battery Storage at New York Fossil Fuel Plant Site*, Energy Storage News, June 23, 2022, <https://www.energy-storage.news/eastern-generation-gets-permit-for-135mw-battery-storage-at-new-york-fossil-fuel-plant-site/>.

<sup>5</sup> See N.Y. P.S.L. §66-p (7)(a).

<sup>6</sup> New York Power Authority, *Small Clean Power Plant Adaptation Study* (April 2022), [https://www.geenergyconsulting.com/content/dam/Energy\\_Consulting/global/en\\_US/pdfs/NYPA-SCPP-Adaptation-Study.pdf](https://www.geenergyconsulting.com/content/dam/Energy_Consulting/global/en_US/pdfs/NYPA-SCPP-Adaptation-Study.pdf) at 6.

<sup>7</sup> See, e.g., Eric Wesoff, *The World’s Biggest Battery Is Being Built for Southern California’s Grid*, *Greentech Media* (Nov. 12, 2014), <https://www.greentechmedia.com/articles/read/the-worlds-biggest-battery-is-being-built-in-southern-california>.

<sup>8</sup> Jeff St. John, *NYPA, Environmental Justice Groups to Work Together on Peaker Plant Replacements*, *Greentech Media* (Oct. 14, 2020), <https://www.greentechmedia.com/articles/read/nypa-environmental-justice-groups-to-work-together-on-peaker-plant-replacements>. (“NYPA’s agreement with the Peak Coalition calls for a study of alternatives . . . . Beyond NYPA’s in-house experts, “we’ll hire consultants and hire a sub-consultant to advise the environmental justice groups . . . . “The first thing we’ll consider seriously is installing existing storage technology on a hybrid basis,” using batteries to augment power plant capacity. . . .”)

<sup>9</sup> *Id.* at 31 (“The modeling of hybridization at the Hell Gate site led to projected regional CO<sub>2</sub> reductions of 23,000 tons and local NO<sub>x</sub> reductions in New York City of 12 tons . . .”).

using its peaker plant sites and related electrical infrastructure in New York City.<sup>10</sup> The request for proposals was based on the study’s “promising results” indicating that plants in New York City “could begin the transition to low or zero carbon emission technologies well ahead” of its longer term carbon reduction goals.<sup>11</sup> The NYPA study openly acknowledges that its New York City peaker plants are located in environmental justice communities, and that “the retirement of fossil fuel resources results in significant reduction of local pollutants, which leads to health improvements in currently affected communities.”<sup>12</sup>

***The need for transparent transmission modeling and real incentives to adhere to or speed up in service dates for transmission solutions***

We are concerned with how much NYISO, the PSC, and NYSERDA truly incentivize both onshore and offshore transition in-service dates, which will interconnect into Zone J. Those are the true solutions, not keeping peaking plants online in overburdened communities in violation of CLCPA Section 7(3).

***Longer term analysis***

Of course, NYISO has separate, longer-term planning processes (most importantly the System & Resource Outlook) that examine multiple cases and scenarios to analyze how changes in supply and demand will affect the grid of the future and understand what types of investments will be needed to enable achievement of state policy over the long term while maintaining reliability. NYISO does have some discretion to go beyond the rules that mandate inclusion for a short-term reliability assessment that is refreshed every 3 months based on the most up to date data.

***ConEd’s Record Profits in 2022 and the First Quarter of 2023***

It perhaps goes without saying that Coned has recently announced significant investor returns and has the resources to commit more to upholding state law mandates, including most importantly Section 7(3).<sup>13</sup> No stone should go unturned as to what ConEd can commit to in terms of demand response, energy efficiency, load planning, and non wires solutions. NYISO and Con Ed must first seek to fill this near-term reliability need through expedited demand response, energy efficiency and other non-emitting energy resources, as is rebursed and authorized by statute, its tariff, and its rate case proceedings.

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<sup>10</sup> NYPA Press Release, *New York Power Authority Issues Solicitation for Battery Storage Proposals to Use Its Small Clean Power Plant Sites and Electrical Infrastructure*, N.Y. Power Auth., (Apr. 21, 2022), <https://www.nypa.gov/news/press-releases/2022/20220421-battery>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 28.

<sup>13</sup> Con Edison Reports 2023 First Quarter Earnings (May 4, 2023), <https://investor.conedison.com/static-files/c9dc6663-664c-46c5-9767-cc5ad4e2a68a>.

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NYISO must consider the need for communities and other stakeholders to understand the reasons for the projected 2025 shortfall and must make clear to communities, developers, utilities and state agencies that there are various potential solutions that could resolve that shortfall without extending the operation of polluting peaker plants otherwise slated to retire in 2025 and that do not violate Section 7(3) of the CLCPA. What NYISO, ConEd and the state do in response to the NYISO July 23, 2023 Statement is a test for the state's commitment to the CLCPA's equity mandate, and communities are relying on the commitments the state has made to turn off polluting facilities.

We encourage NYISO, ConEd, NYSERDA and other state agencies to provide additional information about its modeling and reasoning, make clear that it expects to receive a wide variety of non-fossil solutions in response to its solicitation, and conduct an accessible town hall on this situation and the potential solutions in the communities where the plants NYISO plans to keep online.

*Respectfully submitted,*

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