

February 13, 2023

S.2585-A(Parker)

Purpose: Creates a program to foster investment in largely hydrogen fueled or small nuclear "zero emissions energy systems"

Statement of opposition: On August 18th, 2021, Independent Power Producers of New York (IPPNY) filed a petition¹ with the New York State Public Service Commission (Commission) requesting that the Commission establish a new tier of New York's Clean Energy Standard to subsidize a minimum of one gigawatt of non-renewable "zero emitting electric generating facilities" to commence commercial operation by 2030. S.2585-A would codify the IPPNY petition.

As drafted, S.2585-A, like the original IPPNY petition, would gut the Climate Leadership and Community Protection Act's zero emissions mandate by redefining "zero emissions" to include highly emitting generation sources, impede the State's efforts to truly achieve zero emissions electric generation, and needlessly impose additional costs on electric ratepayers. S.2585-A offers a novel and untenable definition of "zero emissions" that would include all energy systems that "do not lead to a net increase in greenhouse gas emissions into the atmosphere at any time in the process of generating electricity." Under this definition, any resource—even a new fossil-fuel fired power plant—could qualify as zero emission so long as it displaced slightly higher emitting and less efficient fossil fuel generation when it operated (as typically occurs in the grid's dispatch stack).

In addition, it would allow unlimited emissions of conventional air pollutants such as harmful nitrogen oxides, which are emitted when fuels such as hydrogen are combusted rather than reacted in a fuel cell. By redefining "zero emissions" as "non-emissions-increasing" and excluding renewable energy resources from the newly proposed CES tier, S.2585-A would incentivize new fossil fuel power plants and could lead to the State's electric customers underwriting polluting fracked gas and other environmentally harmful facilities at precisely the time the State is striving to wean itself off of these resources.

Indeed, S.2585-A is also likely to exacerbate respiratory diseases, cancers and other ailments in New York's most disadvantaged neighborhoods by opening the door for further investments in fossil generation or small nuclear reactors in lower income communities and communities

¹ 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, PSC Case No. 15-E-0302 (Aug. 18, 2021).

of color that currently bear a disproportionate share of power plant pollution in New York. That door must remain firmly shut to this type of environmental injustice.

In addition, the non-fossil fuel alternatives identified in the legislative support memo (including blue and green hydrogen and so-called “renewable natural gas”) are undemonstrated in New York and have recently been expressly rejected as commercially unavailable by fossil fuel developers in the State.² Moreover, both hydrogen and biogas have non-zero greenhouse gas emissions and significant conventional air pollution impacts rendering them incompatible with the CLCPA’s zero emissions mandate.³

Truly zero emissions dispatchable technologies such as multi-day or seasonal storage, while rapidly moving toward commercialization, are not yet available. While the Power Generation Advisory Panel of the CAC, and the Final Scoping Document encourages support for long-duration storage through research and demonstration projects, the goals set within S.2585-A are premature at this time. In enacting the CLCPA, the legislature never intended to create a distinct category of *non-renewable* “zero emissions” resources. In fact, the CLCPA established 70 percent renewable generation as a *minimum* to be achieved by 2030,⁴ and no such non-renewable tier or supporting program through legislation was contemplated or needed. The S.2585-A memorandum of support erroneously suggests that the remaining 30% of the grid will be supplied by burning hydrogen, “renewable natural gas” and nuclear power. New York State still operates a grid with less than 10% of its power generation capacity from wind and solar energy. The legislature should focus on developing truly renewable energy resources rather than advancing unproven technologies of last resort.

The Power Generation Advisory Panel recognized that dispatchable non-renewable technologies are unstudied and unproven and recommended that “[f]urther analysis, technical development, and research is needed in order to determine the feasibility, climate impact, and health impacts of advanced fuels *prior to infrastructure investment.*”⁵ S.2585-A would have the Commission skip these critical steps in its rush to compel electric customers to subsidize investments in these speculative technologies, which could extend the lives of fossil fuel facilities, disincentivize renewable energy development and pollute environmental justice communities before truly zero emission alternatives are commercially available.

The Sierra Club Atlantic Chapter urges you to oppose S.2585-A in favor of real solutions to achieving a truly renewable and zero emissions grid by 2040 in NY.

² NRG DSEIS for Astoria at 4-21 (rejecting renewable natural gas and “green” hydrogen alternatives as “not technically feasible because currently there are no commercially available sources of either green hydrogen or RNG on the high pressure natural gas pipeline system.”)

³ Hydrogen combustion (whether a blend grey and green hydrogen or 100 percent green hydrogen) can produce up to six times the level of NOx emissions as methane combustion. See, e.g., Earthjustice, *Reclaiming Hydrogen for a Renewable Future: Distinguishing Oil & Gas Industry Spin from Zero-Emission Solutions* 24–26 (Aug. 2021), https://earthjustice.org/sites/default/files/files/hydrogen_earthjustice.pdf; Clean Energy Group, *Hydrogen Hype in the Air* (Dec. 2020), <https://www.cleanenergygroup.org/hydrogen-hype-in-the-air/>; Justin Mikulka, *Decoding the Hype Behind the Natural Gas Industry’s Hydrogen Push*, Desmog Blog (Jan. 14, 2021), <https://www.desmogblog.com/2021/01/14/decoding-hype-behind-natural-gas-industry-hydrogen-push/>; NRDC, *Issue Brief: A Pipe Dream or Climate Solution? The Opportunities and Limits of Biogas and Synthetic Gas to Replace Fossil Fuels* (June 2020), at 3, <https://www.nrdc.org/sites/default/files/pipe-dream-climate-solution-bio-synthetic-gas-ib.pdf>; Earthjustice & Sierra Club, *Rhetoric v Reality: The Myth of “Renewable Natural Gas” for Building Decarbonization* (July 2020), https://earthjustice.org/sites/default/files/feature/2020/report-decarb/Report_Building-Decarbonization-2020.pdf.

⁴ Pub. Serv. L. § 66-p(2)(a).

⁵ Power Generation Advisory Panel Recommendations (May 3, 2021), at Slide 46 (emphasis added), available at <https://climate.ny.gov/Climate-Action-Council/Meetings-and-Materials>.