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June 30, 2022

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NYSERDA  
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Re: Mercuria Energy America, Inc.'s Draft Scoping Plan Comments

Dear NYSERDA:

Please find attached comments on behalf of Mercuria Energy America, Inc. regarding the New York Climate Action Council's Draft Scoping Plan.

Please do not hesitate to contact us if you have any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "Noah C. Shaw", written over a horizontal line.

Noah C. Shaw  
Peter S. Ross

*Attorneys for Mercuria Energy America, Inc.*

# Mercuria Energy America, Inc.'s Comments on the New York Climate Action Council's Draft Scoping Plan

## I. Executive Summary

Mercuria Energy America, Inc. (“Mercuria”) appreciates the opportunity to provide comments on the New York Climate Action Council’s (“CAC” or “Council”) Draft Scoping Plan (“DSP”). We commend New York on establishing some of the most ambitious climate goals in the nation under the Climate Leadership and Community Protection Act (“CLCPA”), and in particular on its commitment to achieve 70% renewable energy by 2030 and a zero-emission grid by 2040. The DSP represents an impressive effort to chart a holistic, economy-wide plan to achieve those targets.

However, the DSP fails to fully address the problem of leakage of carbon-intensive electricity generation to neighboring states, which undermines the ability of New York to decarbonize its economy or achieve a zero-emission grid. Importing electricity from coal-fired generation that would be illegal if sited in New York, in particular, is a current and growing policy gap for the State and is not currently addressed in the DSP.

We therefore urge the Council to include in the final scoping plan a specific policy proposal to address the importation of carbon-intensive electricity into the New York Control Area. We propose the following two policies as options to achieve such a result, and suggest to the Council that it consider additional options as it finalizes the DSP:

- Encourage increased New York Public Service Commission (“PSC”) oversight of import-related greenhouse gases (“GHG”) through utility rate cases, consistent with CLCPA policy; and
- Implement carbon pricing in the NYISO-administered wholesale energy market with provisions to ensure no import of resources inconsistent with CLCPA policy.

## II. Background of Mercuria

Mercuria is the United States subsidiary of Mercuria Energy Group Ltd., one of the world’s largest integrated energy and commodity trading companies.<sup>1</sup> In 2021, Mercuria committed to directing half its energy investments into energy transition projects.<sup>2</sup>

In part due to its status as a buyer and trader of energy commodities, and in part due to its commitment to make increased investments in renewable generation and other energy-transition assets, Mercuria has a strong interest in New York policymakers effectively and transparently implementing their expressed policy goals for the State’s electric grid; namely, that fair and

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<sup>1</sup> See Mercuria, “Performance & Risk Management,” <https://mercuria.com/about-us/performance-and-risk-management#:~:text=Mercuria%20is%20one%20of%20the,correlation%20with%20the%20commodity%20cycle>.

<sup>2</sup> Neil Hume & Emiko Terazono, *Mercuria Pledges Half its Investments to Energy Transition*, FINANCIAL TIMES (June 15, 2021), <https://www.ft.com/content/06ea940a-2bfe-487a-8c50-5d8fcd402525>.

consistent market rules and conditions be maintained for all buyers and sellers of energy commodities, and that market rules and conditions not unduly inhibit the viability of renewable and other energy-transition assets as they compete in those markets.

### III. CLCPA Goals and the Draft Scoping Plan’s Recommended Strategies

New York State has established ambitious requirements of an economy-wide 40% reduction in GHG emissions below 1990 levels by 2030 and at least an 85% reduction in GHG emissions by 2050. These mandates are described in the CLCPA, which also directed the PSC to establish a program to ensure (1) a minimum of 70% of state-wide electricity demand be served by renewable energy systems by 2030,<sup>3</sup> and (2) that the electricity sector be emissions-free by 2040.<sup>4</sup> Notably, electricity imports are counted for purposes of determining compliance with these targets, since the targets are defined with respect to electricity *consumed* by New York end-users.<sup>5</sup> The PSC recently modified the Clean Energy Standard (“CES”) to align it with the CLCPA’s 70% renewable energy by 2030 mandate.<sup>6</sup>

The CLCPA contemplates that these goals might result in “leakage” across multiple sectors — that is, “a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside of the state”<sup>7</sup> — and attempts to limit such leakage. In particular, the CLCPA charges the Council with addressing the question of leakage in its scoping plan, which aims to set forth pathways by which the State can reach the CLCPA’s goals. However, at present, the Council’s DSP does not adequately address the possibility that leakage might occur by importing emissions-intensive electricity from outside of New York. Rather, the DSP focuses on energy intensive industries that currently operate in-state, but may move out-of-state as a result of the CLCPA’s policies.<sup>8</sup>

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<sup>3</sup> The CLCPA defines renewable energy systems as “systems that generate electricity or thermal energy through use of the following technologies: solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not utilize a fossil fuel resource in the process of generating electricity.” PSL § 66-p(1)(b); *see also* Case 15-E-0302, *Order Adopting Modifications to the Clean Energy Standard* (Oct. 15, 2020) at 15.

<sup>4</sup> *See* PSL § 66-p(2) (codifying CLCPA’s targets). The CLCPA also requires the PSC to conduct a biennial review, starting in 2024, of the program, determining: “(a) progress in meeting the overall targets for deployment of renewable energy systems and zero emission sources, including factors that will or are likely to frustrate progress toward the targets; (b) distribution of systems by size and load zone; and (c) annual funding commitments and expenditures.” PSL § 66-p(3).

<sup>5</sup> PSL § 66-p(2) defines the targets as “(a) a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities *to meet the electrical energy requirements of all end-use customers in New York state* in two thousand thirty shall be generated by renewable energy systems; and (b) that by the year two thousand forty . . . the *statewide electrical demand system* will be zero emissions” (emphasis added); *see also* Case 15-E-0302, *Order Adopting Modifications to the Clean Energy Standard* (Oct. 15, 2020), at 2-3 (noting Tier 1 of the CES “obligates each [LSE] to serve its retail customers by procuring new renewable resources, evidenced by the procurement of qualifying Tier 1 [RECs] from [NYSERDA] or other sources, or by making Alternative Compliance Payments.”).

<sup>6</sup> *See* Case 15-E-0302, *Order Adopting Modifications to the Clean Energy Standard* (Oct. 15, 2020).

<sup>7</sup> ECL § 75-0101(12).

<sup>8</sup> *See* New York Climate Action Council Draft Scoping Plan, § 7.3; *Id.*, Appendix C, *JTWG Recommendations to the Council on Measures to Minimize the Carbon Leakage Risk and Minimize Anti-Competitiveness Impacts of*

This omission by the Council in its DSP may result in a policy loophole that could prevent the State from achieving its CLCPA requirements: the CLCPA and the State’s implementing regulations do not currently and — as described in the DSP — would not in the future work to disallow the purchase by New York’s load-serving entities (“LSEs”) of emission-heavy electricity from outside of the State. If left unaddressed, such imports may prevent the State from achieving its CLCPA mandates (as emissions from such purchases will be counted against the CLCPA’s goals)<sup>9</sup> and impede the creation of a zero-carbon electricity system in New York in which fair, consistent energy markets are maintained.

#### IV. NYSEG’s Recent Increase of Coal Imports: A Sign of Things to Come

The Clean Energy Standard (“CES”) is the cornerstone of New York’s efforts to decarbonize its electricity sector, and operates by requiring LSEs to purchase renewable energy certificates (“RECs”) and make payments for zero-emission credits in proportion to their served load, or make an alternative compliance payment. At present the CES Tier 1 compliance obligations only cover a small fraction of a LSE’s load: 3.25%, 6.16%, and 6.45% for 2022, 2023, and 2024, respectively.<sup>10</sup>

The CES does not otherwise regulate or incentivize LSE purchases of energy unassociated with RECs or ZECs. LSEs may contract with higher-emission generators, either in-state or out-of-state, for energy and/or capacity if they deem it in their economic interest to do so. Switching from natural gas to coal or oil-fired generation, for instance, would not increase an LSE’s payment obligations under the CES, even though it would *increase* the carbon profile of the LSE’s electricity purchases and offset emission reductions associated with their REC and ZEC purchases through the CES.

This is not a hypothetical problem. New York State Electric and Gas (“NYSEG”), an LSE and PSC-regulated utility, has recently *increased* its imports of coal-fired generation from the Homer City Facility in Indiana County, Pennsylvania, approximately 45 miles northeast of Pittsburgh and approximately 100 miles south of the New York state border. The power plant

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*Potential Carbon Policies and Energy Sector Mandates* (Dec. 30, 2021); <https://climate.ny.gov/Our-Climature-Act/Draft-Scoping-Plan>.

<sup>9</sup> The New York State Department of Environmental Conservation (“DEC”) must file a report on statewide greenhouse gas emissions that includes “an estimate of greenhouse gas emissions associated with the generation of imported electricity and with the extraction and transmission of fossil fuels imported into the state which shall be counted as part of the statewide total.” CLCPA § 75-0105(3) (CLCPA § 2 amended the ECL with a new section, 75-0105(1)-(7)). DEC filed its first report in 2021. *See* DEC, *2021 NYS Greenhouse Gas Emissions Report, Sectoral Report #1* (2021), [https://www.dec.ny.gov/docs/administration\\_pdf/ghgenergy21.pdf](https://www.dec.ny.gov/docs/administration_pdf/ghgenergy21.pdf).

<sup>10</sup> Case 15-E-0302, *Order Modifying Clean Energy Standard Load Serving Entity Obligations and Establishing the 2024 Obligations* (Mar. 16, 2022), at 11; *see also* NYSERDA, *LSE Obligations*, <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/LSE-Obligations>.

consists of three units that have capacity ratings of 620 megawatts (“MW”), 614 MW, and 650 MW, respectively, totaling a net generation capacity of 1,884 MW.<sup>11</sup>

What’s more, these payments have helped keep all of the Homer City Facility’s units online when the facility was in jeopardy of downsizing. In April 2022, owners of the Homer City Facility announced that the facility would continue operating at full capacity, despite prior reports that these owners were considering shuttering one or more units.<sup>12</sup> This decision coincided with the owners seeking additional time to consider the extent of the Homer City Facility’s participation in upcoming wholesale capacity market auctions, according to local media reports.<sup>13</sup> The most recent PJM capacity auction for the 2023-2024 year resulted in \$34.13/MW-day capacity obligation offers in the rest of RTO region, lower than the \$50.00/MW-day offered for 2022-2023, with reportedly less coal capacity offered.<sup>14</sup> The decrease in revenues from PJM wholesale markets may make NYISO revenues all the more important for the Homer City Facility’s near-term survival.<sup>15</sup>

NYSEG shareholders were not penalized for this decision; they were rewarded. In NYSEG’s latest rate case, which the PSC approved in November 2020, the utility proposed to share “cost savings” from “optimization activities associated with NYSEG’s grandfathered transmission entitlements” — *i.e.*, utility-speak for ramping up their coal imports from the Homer City Facility:

NYSEG will share 80% / 20% between customers and shareholders the cost savings resulting from optimization activities associated with NYSEG’s grandfathered transmission entitlements of up to 471 MW from the Homer City Generating Station, located in PJM Interconnection LLC regional transmission organization, into the New York Independent System Operator, Inc. regional transmission

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<sup>11</sup> See, e.g., Sierra Club, *Petition to Object to the Proposed Title V Permit for EME Homer City, LP’s Homer City Generating Station*, Issued by the Pennsylvania Department of Environmental Protection, ID No. 32-00055 (Sept. 6, 2012) at 1-2, [https://www.epa.gov/sites/default/files/2015-08/documents/homer\\_petition2012.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/homer_petition2012.pdf).

<sup>12</sup> See Aaron Larson, *Homer City Coal Plant to Keep All Three Units Operating*, POWER (Apr. 6, 2022), <https://www.powermag.com/homer-city-coal-plant-to-keep-all-three-units-operating/>; David Hurst, *Homer City power plant will remain at full operation*, THE TRIBUNE DEMOCRAT (Apr. 5, 2022), [https://www.tribdem.com/news/local\\_news/homer-city-power-plant-will-remain-at-full-operation/article\\_9f0e8ae8-b4e6-11ec-9510-6f084759b709.html](https://www.tribdem.com/news/local_news/homer-city-power-plant-will-remain-at-full-operation/article_9f0e8ae8-b4e6-11ec-9510-6f084759b709.html).

<sup>13</sup> *Id.*

<sup>14</sup> PJM Inside Lines, *PJM Capacity Auction Secures Electricity Supplies at Competitive Prices* (June 21, 2022) (“[c]leared capacity of steam units (primarily coal) was down 7,186 MW to 27,682 MW, tracking with a decrease of 7,813 MW offered into the auction as a result of coal retirements”), <https://insidelines.pjm.com/pjm-capacity-auction-secures-electricity-supplies-at-competitive-prices/>; PJM, “2023/2024 RPM Base Residual Auction Results,” <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2023-2024/2023-2024-base-residual-auction-report.ashx>.

<sup>15</sup> See Wamsted et al, *Private Equity’s Losing Bet on PJM Coal Plants: Challenging Economics, Rising Competition Undercutting Region’s Coal-fired Power Plants*, INST. FOR ENERGY ECON. AND FIN. ANALYSIS (June 2022) at 19, <https://ieefa.org/resources/private-equitys-losing-bet-pjm-coal-plants> (“In the short term, the next move for Homer City almost certainly will depend on the coming capacity auction. Clearing the auction could give the plant another year’s lease on life.”). Note that this report did not discuss NYISO-derived revenues of the Homer City Facility. *Id.*

organization. The optimization of these entitlements will benefit all delivery customers through lower electric supply costs in the [Non-Bypassable Charge].<sup>16</sup>

In testimony with respect to this issue during the most recent rate case, NYSEG representatives elaborated that:

Under standard operating procedures and subject to Homer City generation availability, NYSEG evaluates market conditions and may schedule energy up to 471 MW per hour in the PJM and NYISO day-ahead and/or real-time markets. For the Test Year [*i.e.*, 12 months ending December 31, 2018], this optimization resulted in over \$4.6 million savings, \$3.4 million savings from day-ahead market transactions and about \$1.2 million savings from real-time market transactions.<sup>17</sup>

The continuing import of energy and capacity from a facility like Homer City is at cross-purposes with the CLCPA's mandates and New York's environmental regulations. While NYSEG was importing coal-fired electricity from Pennsylvania, New York's "last remaining coal-fired power plant clos[ed] in 2020, following DEC's adoption of revisions to 6 NYCRR Part 251 to establish CO2 emission limits for existing power plants."<sup>18</sup> It does not serve New York's economic or environmental interests, and is contrary to State policy, to shut down its own coal plants and transition its own workers only to leave the door open for its utilities to import high-emission electricity from out of state.

## **V. Policy Solutions for Imported Fossil-Fueled Energy**

With respect to the electricity sector, the vast majority of the DSP's proposed policies focus on solving in-state problems — *e.g.*, decarbonizing in-state generation, improving the in-state grid, and advancing in-state demand side and technology solutions.<sup>19</sup> For example, the DSP aptly identifies "Retirement of Fossil Fuel Fired Facilities" as a key strategy necessary to "[a]chieving a 100% emissions-free power grid."<sup>20</sup> However, as the Homer City Facility example illustrates, shutting down all the fossil fueled generation in New York will not on its own result in a zero-emission grid by 2040; imports must be specifically addressed and accounted for. New York should not allow or encourage its LSEs to circumvent the State's policy designed to achieve the CLCPA's mandates through the unfettered importation of fossil-fueled — and coal-fueled, in particular — generated electricity.

Therefore, we urge that the Climate Action Council develop a specific decarbonization strategy for electricity imports. If implemented well, these policies could not only remove fossil

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<sup>16</sup> Case 19-E-0378, *Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal With Modifications* (Joint Proposal) at 66 (Nov. 19, 2020).

<sup>17</sup> Case 19-E-0378, Jacqueline I. Casciani et al., *Direct Testimony of Electric Gas and Supply Panel* (May 20, 2019) at 14.

<sup>18</sup> DSP at 149-150.

<sup>19</sup> *See* DSP at 154.

<sup>20</sup> DSP at 154.

fuel-fired generating facilities from New York’s system, but also diminish and/or eliminate GHGs associated with electricity imports from out-of-state facilities.

More to the point, they are the only policies in the DSP that could plausibly do so. Outright banning non-renewable or carbon-intensive imports into New York may run afoul of the U.S. Constitution’s dormant Commerce Clause or be preempted by the Federal Power Act.<sup>21</sup> Market-based, technology-neutral proposals such as a carbon pricing program are not optional, nice-to-have policies; with respect to imports, they are essential. Because of this, we urge the DSP lay out actionable and practical steps for policymakers to follow, including clear milestones and enforceable timelines.

Mercuria emphasizes that this is not a one-off issue with respect to NYSEG, but instead represents a categorical problem with respect to imported electricity. Other regulated utilities and LSEs may face similar economic pressures to increase high-emission imports now and in the future, absent a comprehensive state policy response.

A. Encourage Commission Oversight through Utility Rate Cases

The final scoping plan should call for the PSC to use its oversight authority over jurisdictional utilities to address import arrangements that are inconsistent with the CLCPA.

The PSC should closely scrutinize any shareholder benefit from “cost savings” that comes from procurements of out-of-state coal-fired generation or transmission entitlements related thereto. The PSC approved the rate case for NYSEG and its sister company, RG&E, on November 19, 2020.<sup>22</sup> As noted above, the applicable part of the PSC-approved Joint Proposal states,

Homer City Generating Station Optimization Revenues NYSEG will share 80% / 20% between customers and shareholders the cost savings resulting from optimization activities associated with NYSEG’s grandfathered transmission entitlements of up to 471 MW from the Homer City Generating Station, located in PJM Interconnection LLC regional transmission organization, into the New York Independent System Operator, Inc. regional transmission organization. The optimization of these entitlements will benefit all delivery customers through lower electric supply costs in the [Non-Bypassable Charge].<sup>23</sup>

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<sup>21</sup> See, e.g., *North Dakota v. Heydinger*, 825 F.3d 912 (8th Cir. 2016) (affirming injunction of a Minnesota law stating “no person shall . . . (2) import or commit to import from outside the state power from a new large energy facility that would contribute to statewide power sector carbon dioxide emissions; or (3) enter into a new long-term power purchase agreement that would increase statewide power sector carbon dioxide emissions.”). The three-judge panel of this court affirmed the district court’s injunction, but divided over the rationale. Two judges concluded that the Minnesota Act was preempted (each relying on a different federal statute), and one judge concluded that the state statute violated the dormant Commerce Clause. *Id.*

<sup>22</sup> Case 19-E-0378, *Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, With Modifications* (Nov. 19, 2020).

<sup>23</sup> *Id.*

The New York League of Conservation Voters opposed this arrangement in a letter to PSC in reference to last rate case.<sup>24</sup> The PSC Order further notes that during the public statement hearing, “[o]ne commenter opposed the use of energy from the Homer City Generation Station in Pennsylvania, stating that NYSEG should not be allowed to purchase electricity from coal-powered generating plants.”<sup>25</sup> However, the Order did not specifically address the substance of these concerns.

NYSEG recently filed for a request for a delivery rate increase with the revised tariff filed to become effective by June 24, 2022.<sup>26</sup> Neither the proposed tariff revisions, nor the portions of the prepared written testimony and exhibits comprising NYSEG’s direct case in support thereof mention Homer City or grandfathered rates. The PSC could use this and future cases to inquire about the coal-fired imports and associated transmission rights and take action accordingly.

B. Implement Carbon Pricing in NYISO’s Wholesale Energy Market that Applies to Imports

We strongly support the DSP’s direction to “[i]nvestigate and implement options to develop market mechanisms to assist in the removal of fossil fuel-fired generating facilities from the system,” including “carbon pricing and valuing of environmental attributes either within or external to NYISO markets.”<sup>27</sup>

The NYISO has been developing a technology-neutral carbon pricing proposal over the past several years, which could apply to imports as well as in-state transactions.<sup>28</sup> It is a strong, well-studied proposal, which if modified to account for imports, would have the effect of disincentivizing energy procurements from carbon-intensive generation both inside and outside of New York.<sup>29</sup> Given the growth of low-carbon generation in PJM since 2018<sup>30</sup> and the continued imports of coal generation into the NYISO, we urge the Council to reassess the

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<sup>24</sup> *Letter from New York League of Conservation Voters to New York Public Service Commissioners re: Case 19-E-0378, et al.*, available at <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C34B1148-37C2-4A47-B30F-00D7221325CE}>.

<sup>25</sup> Case 19-E-0378, *Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal, With Modifications* (Nov. 19, 2020).

<sup>26</sup> Case 22-E-0317, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service*.

<sup>27</sup> DSP at 158.

<sup>28</sup> See NYISO, *IPPTF Carbon Pricing Proposal Prepared for the Integrating Public Policy Task Force* (Dec. 7, 2018); see also NYISO, “Carbon Pricing,” <https://www.nyiso.com/carbonpricing>.

<sup>29</sup> Analysis Group, *Clean Energy in New York State: The Role and Economic Impacts of Carbon Price in NYISO’s Wholesale Electricity Markets* (Oct. 3, 2019), available at <https://www.nyiso.com/documents/20142/2244202/Analysis-Group-NYISO-Carbon-Pricing-Report.pdf/81ba0cb4-fb8e-ec86-9590-cd8894815231?t=1570098837163>.

<sup>30</sup> See, e.g., James Bruggers, *Overwhelmed by Solar Projects, the Nation’s Largest Grid Operator Seeks a Two-Year Pause on Approvals*, INSIDE CLIMATE NEWS (Feb. 2, 2022), <https://insideclimatenews.org/news/02022022/pjm-solar-backlog-eastern-power-grid>.



NYISO's premise that "there are limited opportunities to achieve additional carbon abatement by incentivizing carbon abatement outside of New York."<sup>31</sup> Incorporating the negative cost of GHG emissions into the wholesale energy market price would increase the price of high-emission energy and thus render it less competitive when compared to low-emission alternatives.<sup>32</sup> For instance, if Homer City Facility-generated energy cost NYSEG more to procure, then NYSEG would not schedule as much energy and would consider other, less-polluting generation sources to meet their customer's energy needs.<sup>33</sup>

However, the proposal has been studied for years and it is not clear whether there is urgency on the part of the policymakers to implement it in the near-term. NYISO officials have stated that NYISO will not move forward until the State endorses its proposal, and it is not clear that such support is forthcoming. NYISO stakeholders have yet to vote on whether to approve carbon pricing wholesale market rules.

For these reasons, a more forceful endorsement of carbon pricing in the DSP, especially with respect to imported electricity, is warranted.

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<sup>31</sup> The NYISO Proposal suggested that NYISO apply a carbon charge to State-internal and State-external transactions in manner that would preserve the level playing field that exists between in-State and out-of-State generators absent a carbon charge. NYISO would add that carbon charge to transactions for (internally- or externally-produced) electricity that delivered power in New York State, and subtract the charge where internally-produced electricity is delivered out-of-State customers. See NYISO, *IPPTF Carbon Pricing Proposal* (Dec. 7, 2018) at 8-9, <https://www.nyiso.com/documents/20142/2244202/IPPTF-Carbon-Pricing-Proposal.pdf/60889852-2eaf-6157-796f-0b73333847e8?t=1547044924178>. This preserves the pre-carbon pricing status quo with respect to imports, but as the NYISO recognizes, the policy "does not incentivize cost-effective carbon abatement outside of New York," including "reductions in coal-based imports from PJM." *Id.* Any treatment by the Council of a carbon charge should ensure that the importation of carbon intensive generation, including through the pool power market, be accounted for, consistent with CLCPA policy.

<sup>32</sup> See NYISO, *IPPTF Carbon Pricing Proposal Prepared for the Integrating Public Policy Task Force* (Dec. 7, 2018) at 4 ("In addition to charging internal emitting generators, the NYISO would charge imports and credit exports the LBMP carbon impact to prevent the carbon charges on internal generation from causing emissions leakage and costly distortions.").

<sup>33</sup> Technology-neutral rules are preferable, since FERC would likely strike down a coal-specific prohibition as unduly discriminatory under the FPA. The FPA empowers FERC to set rates, and rules or practices affecting such rates, for transmission or sales under its jurisdiction that are not "unjust, unreasonable, unduly discriminatory or preferential." 16 U.S.C. § 824e.