

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-E-0302 – In the Matter of the Implementation of a Large-Scale Renewable Program

**FINAL COMMENTS OF CLEAN ENERGY ADVOCATES CONCERNING WHITE
PAPER ON CLEAN ENERGY STANDARD PROCUREMENTS TO IMPLEMENT NEW
YORK'S CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT**

Natural Resources Defense Council, Sierra Club, New York League of Conservation Voters and Environmental Advocates New York (the Clean Energy Advocates) respectfully submit the following final comments concerning the White Paper issued by the New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service (DPS) on June 18, 2020 to address the requirements set forth in the Climate Leadership and Community Protection Act (CLCPA) concerning a renewable energy program. Specifically, the CLCPA requires the Public Service Commission (Commission) to establish a program that requires load serving entities (LSEs) to secure enough renewable energy to serve at least 70% of their load by 2030 (the 70 by 30 Target) and that the electric sector be emissions-free by 2040.¹

As stated in our preliminary comments filed on July 24, 2020 (Preliminary Comments),² Clean Energy Advocates commend NYSERDA and DPS on the preparation of the White Paper with a proposed regulatory structure to achieve these ambitious clean energy requirements. If implemented, the proposals set forth in the White Paper will build on the existing Clean Energy Standard (CES), which has effectively used a central procurement approach and an LSE obligation to increase deployment of renewable resources. These final comments supplement our Preliminary Comments and primarily respond to preliminary comments submitted by other parties.

¹ PSL § 66-p(2).

² Clean Energy Advocates, Preliminary Comments (July 24, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F1AAC7A5-DC1D-4072-92E1-605D5F508C57}>.

I. CLCPA Requirements

A. Clean Energy Advocates Reiterate the Importance of NYPA and LIPA Participation and of Limiting Resource Eligibility to the Technologies Provided in the CLCPA

The White Paper addresses three relevant statutory issues: “(1) the status of non-jurisdictional load-serving entities (LSEs); (2) the definition of ‘renewable energy systems’; and (3) requirements related to disadvantaged communities.”³

While these final comments focus on the third issue, Clean Energy Advocates again emphasize the importance of commitments from non-jurisdictional LSEs such as NYPA and LIPA to achieve statewide goals for the electric sector, as well as for greenhouse gas emissions reduction more broadly.⁴ We also reiterate our support for the White Paper’s proposal to decline to expand resource eligibility beyond the technologies provided in the CLCPA’s definition of “renewable energy systems.”⁵ The Commission can and should apply more specific requirements where applicable—for example, the White Paper recommends certain “eligibility restrictions on hydropower.”⁶ However, contrary to suggestions made by some parties in their preliminary comments,⁷ the Commission does not have the authority to include technologies in the CLCPA-mandated Renewable Energy Program that are excluded by the CLCPA’s own definitions.⁸

³ White Paper at 8.

⁴ Clean Energy Advocates, Preliminary Comments at 5-6, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F1AAC7A5-DC1D-4072-92E1-605D5F508C57}>.

⁵ *Id.* at 6.

⁶ White Paper at 11.

⁷ *See, e.g.*, Environmental Energy Alliance of New York, Preliminary Comments at 2, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={888CA353-AAB9-4889-A506-D5AAA966C23}> (“we believe the omission is an oversight as there is no explicit language in the CLCPA that omits biomass and biogas”).

⁸ PSL § 66-p(1)(b), added by CLCPA § 4, 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.” Use of the phrase “the following technologies” (rather than “technologies including, but not limited to”) indicates an exclusive list.

B. The 70 by 30 CES Must be Designed to Provide Benefits to Disadvantaged Communities as Required by the CLCPA

Certain communities have borne an outsized share of the pollution burden associated with New York’s electricity production to date. Multiple provisions in the CLCPA are intended to address these disproportionate burdens by ensuring that clean energy investments and programs—such as the Clean Energy Standard—benefit disadvantaged communities,⁹ and that agency decision-making prioritizes emission reductions in disadvantaged communities and addresses the disproportionate burdens these communities face.¹⁰ Although application of these mandates presents novel and complex issues in a program as far-reaching as the Clean Energy Standard, they must be grappled with as the Commission moves forward with CES implementation. As more fully set forth in Clean Energy Advocates’ Preliminary Comments, certain principles should guide the Commission’s actions.

First, Clean Energy Advocates again encourage the Commission to establish a meaningful stakeholder engagement process to thoroughly address the input of environmental justice and disadvantaged communities. Further stakeholder outreach by NYSERDA and DPS may be warranted to encourage this input. This additional outreach could be conducted in partnership with the CLCPA Climate Justice Working Group to help facilitate equitable engagement. Clean Energy Advocates note that several parties, including NY Renews and AGREE, have recommended that one component of this additional stakeholder outreach should be further consideration of how the updated CES will deliver, report on, and transparently track these required benefit levels to disadvantaged communities.¹¹ In addition, the reporting

⁹ E.C.L. § 75-0117.

¹⁰ CLCPA § 7(3).

¹¹ Preliminary Comments of NY Renews at 8, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={60A14180-C446-4FCC-A8CF->

framework should include verifiable emissions and co-pollutant reductions in disadvantaged communities and data on the economic impacts of these benefits on these communities.

Second, future clean energy solicitations should require developers to identify and articulate the benefits of the project (both economic and environmental/climate) to disadvantaged communities and NYSERDA should prioritize the selection of proposals that will demonstrably benefit disadvantaged communities. As discussed in the Preliminary Comments, past NYSERDA evaluations of economic benefits have not considered who receives them.¹² For example, the 2019 Tier 1 RFP assigned a 10% weight to “Incremental Economic Benefits,” encompassing “short-term economic benefits to New York State” (e.g., short-term jobs, land purchase payments, purchase of local goods and services) and “long-term economic benefits to New York State” (e.g., long-term jobs, increased tax payments or PILOT agreements, host community payments, mitigation/conservation payments, lease payments, and fuel purchases associated with production of electricity).¹³ Similarly, the 2018 Offshore Wind RFP assigned a 20% weight to “New York Economic Benefits,” encompassing “project-specific spending and job creation,” “investment in offshore wind-related supply chain and infrastructure development,” and “input

736A80B23D37}; Preliminary Comments of Alliance for a Green Economy (AGREE) at 5, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6F4C6ED2-BA87-4A1D-ABA0-9CECB7E364DF}>.

¹² Clean Energy Advocates note with encouragement that the July 21, 2020 Tier 1 and Offshore Wind RFPs do include provisions to reward bids with demonstrated benefits for disadvantaged communities. *See* RESRFP20-1 at 21 (“NYSERDA will award more points to Long-Term Economic Benefits to New York State that will be realized in part or in full by Disadvantaged Communities . . . Bid Proposals will be awarded more points by the TEP if the Proposer can demonstrate benefits of the project’s development are afforded to communities located in low-income census tracts, Potential Environmental Justice Areas, and New York Opportunity Zones”); ORECRFP20-1 at 29 (“In developing each Proposal’s Economic Benefits Plan, Proposers are encouraged to recognize NYSERDA’s support of the CLCPA commitments to prioritize benefits to Disadvantaged Communities . . . Such CLCPA commitments to Disadvantaged Communities will therefore be weighted to reflect such prioritization”). The Commission should consider ways to build upon these provisions, which we look forward to further reviewing in partnership with other stakeholders.

¹³ NYSERDA, Renewable Energy Standard Purchase of New York Tier 1 Eligible Renewable Energy Certificates Request for Proposals (RFP) No. RESRFP19-1 RFP at 53-54 (Apr. 23, 2019), <https://portal.nyscrda.ny.gov/servlet/servlet.FileDownload?file=00Pt000000Gp6qiEAB>.

activities that provide opportunities for the New York offshore wind supply chain, workforce, and research and development.”¹⁴ And, consistent with the CLCPA’s Section 7 mandate, NYSERDA must prioritize proposals that will result in reduced greenhouse gas emissions and co-pollutants in disadvantaged communities.¹⁵

Third, the CLCPA requires that the “administrative approvals and decisions” of “all state agencies, offices, authorities, and divisions shall not *disproportionately burden* disadvantaged communities.”¹⁶ This includes any decisions regarding the proposed Tier 4 program, such as resale of RECs, that could potentially cause disproportionate burdens. Clean Energy Advocates note the comments of NY Renewables that the White Paper includes no framework for how agencies should make decisions commensurate with this requirement,¹⁷ and agree that any regulatory framework should include a disproportionate harm analysis to guide agency decision making.

II. The White Paper’s Electric Load Forecast Should be Revised Upward

Clean Energy Advocates appreciate NYSERDA’s efforts to develop a reasonable load forecast for 2030 to serve as the basis for renewable energy procurement targets to satisfy the 70 by 30 Target. As explained in the Preliminary Comments,¹⁸ we believe that NYSERDA’s 2030 forecast of electric load is understated. To ensure that the Clean Energy Standard’s goals are achieved, NYSERDA’s load forecast should be revised upward to reflect the need for more rapid

¹⁴ NYSERDA, Purchase of Offshore Wind Renewable Energy Certificates Request for Proposals ORECRFP18-1 (Nov. 8, 2018) at 23, <https://portal.nyserdera.ny.gov/servlet/servlet.FileDownload?file=00Pt000000F0rjEAB>.

¹⁵ CLCPA § 7(3) provides that in “the execution of grants, loans, and contracts . . . all state agencies, offices, authorities, and divisions shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.”

¹⁶ *Id.* (emphasis added).

¹⁷ Preliminary Comments of NY Renewables at 11-12, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={60A14180-C446-4FCC-A8CF-736A80B23D37}>.

¹⁸ Clean Energy Advocates, Preliminary Comments at 8-10.

deployment of electric vehicles and to conservatively account for uncertainty in achieving and maintaining energy efficiency reductions.

Forecasting load to 2030 necessitates addressing three primary sources of uncertainty: (a) the increase in load from building electrification; (b) the increase in load from transportation electrification; and (c) the reduction in load from energy efficiency. Although we cannot know how quickly electrification of buildings and transportation will occur, the CLCPA establishes a clear destination to be reached by 2050. For building and transportation electrification, we support NYSERDA's proposed approach of working backward from the CLCPA's 2050 climate mandates to establish 2030 forecasts.¹⁹ However, we believe that for the transportation sector, even more aggressive electrification is going to be required to put New York on track to meet 2050 CLCPA requirements.

As discussed in the Preliminary Comments, data from modeling conducted by Synapse Energy Economics for the Sierra Club indicates that a higher penetration of electric vehicles is likely to be required in 2030. Sierra Club retained Synapse to model an on-road vehicle electrification trajectory that would be achievable using available policies and would put the State on track for 2050.²⁰ Synapse's modeling resulted in 30 percent of the on-road vehicle stock being electrified by 2030,²¹ as compared to only 17 percent (corresponding to 9,048 GWh of additional load) in the White Paper. Synapse's analysis also reflects a higher level of light-duty vehicle EV sales in 2030 than the White Paper and underlying Pathways report.²² Consequently, NYSERDA should revisit the assumptions underpinning the 17 percent vehicle stock calculation,

¹⁹ White Paper at 19.

²⁰ Transforming Transportation in New York: Roadmaps to a Transportation Climate Target for 2035 (Sept. 2019).

²¹ Synapse Rpt. at 8 & Fig. 4.

²² Synapse modeling has 75-80 percent of LDV sales being electric by 2030, Synapse Rpt. at 8, while the Pathways Report has 60-70 percent. Pathways Rpt. at 4.

as it appears too low to be part of a workable trajectory to 2050. And load attributable to electric vehicles for 2030 should likely be revised upward.

While Clean Energy Advocates support back-casting from the CLCPA's 2050 mandates to estimate load attributable to building electrification and electric vehicles, forecasting energy efficiency savings counsels a different approach. To avoid under-procuring, we recommend that NYSERDA forward cast based on actual trends in energy savings achieved to date. While Clean Energy Advocates strongly support continuation of aggressive energy savings targets for New York and believe that utilities will achieve these targets, if it becomes clear in later years that these energy efficiency savings are not materializing at the desired rate, it may be difficult to catch up on the needed renewable energy procurements. To help ensure success in meeting the 70 percent RES in 2030, it may be prudent to take the more conservative approach of forward-casting rather than back-casting savings attributable to energy efficiency.

III. Clean Energy Advocates Support the Proposed Tier 1 Procurement Approach with Modifications

A. NYSERDA's Schedule Should Ensure Sufficient Annual Procurements to Reach 70 by 30 Requirement

As set forth in the Preliminary Comments,²³ Clean Energy Advocates support the White Paper's proposal to establish a multi-year procurement schedule (for years 2021 to 2026) and urge the Commission to set a clear expectation that NYSERDA will procure 4,500 GWh per year from Tier 1 resources.²⁴ Having clarity regarding the regularity of solicitations and the intended quantities to be procured will send a clear and strong investment signal to renewable energy developers. Further, targeting procurements to achieve the full 70 by 30 Target by no later than

²³ Clean Energy Advocates, Preliminary Comments at 11-12.

²⁴ Or a similarly proportional annual amount if load forecasts are revised upward consistent with comments above.

2026 is critical given the lag time between contracting and project operation; 2026 is the outside date to contract for Tier 1 renewables that will need to go through the permitting and construction process in order to be in commercial operation by 2030.

While we support an annual procurement target of at least 4,500 GWh, we have recommended that NYSERDA retain flexibility on the upper end to procure as much renewables in any annual solicitation as it deems cost-effective. We do not, however, support NYSERDA's request for unfettered discretion regarding minimum procurements. If NYSERDA falls too far behind the 4,500 GWh per year trajectory, it will quickly become impossible as a practical matter to catch up and successfully meet the 70 by 30 Target. Consequently, while we did not recommend imposing minimum procurements on any individual solicitation, we have suggested that if NYSERDA falls more than 1,000 MW behind the 4,500 GWh/year linear trajectory following any annual solicitation, it should be required to conduct a make-up solicitation in that same calendar year to get back on track.

Several parties in their preliminary comments offered similar recommendations, including the Alliance for Clean Energy (recommending an annual minimum procurement of 75 percent of 4,500 GWh with an obligation to conduct a make-up solicitation if this minimum is not hit);²⁵ Invenenergy (recommending a 75 percent of 4,500 GWh minimum, with any shortfalls added to the following year's procurement target);²⁶ and Avangrid (recommending a minimum procurement set at the higher of 75 percent of the annual average (e.g., 3,375 GWh if PSC adopts the 4,500 GWh average) or 2,500 GWh/year (if future conditions change and PSC lowers the 4,500 GWh annual target)).²⁷ We note that all of these proposals have merit. The benefit of

²⁵ Alliance for Clean Energy Comments at 4.

²⁶ Invenenergy Comments at 2-3.

²⁷ Avangrid Comments at 6.

Clean Energy Advocates' proposed approach is that it provides NYSERDA greater flexibility to reduce procurements in a given year if bids in that year are unattractive and prior years' procurements have put NYSERDA ahead of the 4,500 GWh/year schedule. The proposals from ACENY, Avangrid and Invenergy have the benefit of providing somewhat greater certainty to renewable developers. What is most important is that the approved CES procurement structure identify clear minimum conditions under which NYSERDA is obligated to conduct make-up solicitations to ensure that attainment of the 70 by 30 Target never gets out of reach.

B. NYSERDA Should Consider Tier 1 Contract Lengths of 25 Years

Clean Energy Advocates' Preliminary Comments recommended revisiting the maximum contract length for Tier 1 projects to consider contracts of up to 25 years.²⁸ This recommendation was echoed in comments submitted by the Alliance for Clean Energy²⁹ and New York Offshore Wind Alliance.³⁰ Longer contracts would facilitate more attractive REC prices, as longer contracts lock in REC price for developers for a longer period of time and a longer guaranteed revenue stream should allow developers to lower their REC price bids. A 25-year contract would also cover a greater fraction of the expected commercial life of renewable projects, which would reduce the number of years that these projects would need to be supported through Tier 2 or a similar mechanism once their original Tier 1 REC contract expires. Both the lower REC prices and reduced need for Tier 2 support would benefit New York electric customers.

C. Stand-Alone Storage Projects Should Not be Considered Tier 1 Resources

Key Capture Energy in its initial comments recommended that storage projects be allowed to bid into future Tier 1 solicitations either as stand-alone projects or paired with eligible

²⁸ Clean Energy Advocates, Preliminary Comments at 12.

²⁹ Alliance for Clean Energy Comments at 8.

³⁰ Offshore Wind Alliance Comments at 5.

resources – either through co-location or non-co-location.³¹ Clean Energy Advocates recognize the critical role that storage will play in supporting the integration of high levels of variable renewable resources and enthusiastically support the aggressive energy storage mandates in the CLCPA. We also support strategic solicitations targeting storage, particularly in contexts where it can increase the value to the grid of variable renewables or facilitate the retirement of existing fossil generators and note that this is made increasingly more difficult by the application of buyer-side mitigation, which unfairly prevents storage and clean energy resources from participation in NYISO’s capacity market in areas, like Zone J, where they are most needed. However, any framework for soliciting and procuring stand-alone storage projects should be distinct from the existing Tier 1. Stand-alone storage is not a generation resource and therefore does not directly contribute to attainment of the 70 by 30 Target. In the context of the Clean Energy Standard, support for storage should more appropriately occur through adders for projects that pair storage with new renewable resources.

While stand-alone energy storage should not be eligible for Tier 1 because it is not generation, Clean Energy Advocates support the State exploring other options to encourage storage deployment through the CES Program. Due to the importance of deploying energy storage projects to achieve the CLCPA goals, we urge the State to work with NYISO on rules for so-called hybrid projects – i.e. renewable generation plus storage. The rules that are applied to hybrid projects both for interconnection and for participation in the energy, capacity, and ancillary services markets have a significant impact on the feasibility and profitability of these types of projects.

³¹ Key Capture Energy Comments at 2.

IV. Offshore Wind

Clean Energy Advocates reiterate our support for an ambitious offshore wind procurement trajectory; for continued study of the potential for coordinated transmission solutions; and for the White Paper’s proposed New York State Great Lakes Wind Feasibility Study.³² Other preliminary comments addressing offshore wind issues have expressed similar support.³³ We focus these final comments on the issues of maintaining strong labor, environmental and community benefit contract requirements, preventing procurement shortfalls, ensuring transparency of procurement schedules, and properly classifying any voluntary market OREC purchases.

A. Future Solicitations Should Build on the Contract Requirements and Evaluation Criteria of the July 2020 RFP

Clean Energy Advocates have repeatedly stressed the importance of contract requirements such as mandatory prevailing wage, efforts to secure Project Labor Agreements, and use of environmental and fisheries mitigation plans incorporating Best Management

³² Clean Energy Advocates, Preliminary Comments at 12-16.

³³ *See, e.g.*, Alliance for Clean Energy New York, American Wind Energy Association, Advanced Energy Economy Institute, & Solar Energy Industries Association, Preliminary Comments at 10 (“The White Paper requests authority for NYSERDA to procure the entire 9,000 MW of offshore wind mandated by the CLCPA . . . the Renewable Energy Industry supports the entirety of this proposal . . . We also support the proposal to study the feasibility of development of offshore wind in the Great Lakes”); New York Offshore Wind Alliance, Preliminary Comments at 4-5 (“NYOWA fully supports the State’s ongoing transmission study of . . . an offshore network or coordinated transmission system . . . the State should give a high priority to addressing offshore transmission issues . . . NYOWA supports the WP proposal for NYSERDA to conduct a feasibility study of Great Lakes offshore wind”); Avangrid, Preliminary Comments at 9-10 (“Avangrid supports the clear and transparent trajectory of annual average procurements . . . [this procurement schedule] underscores the importance to expeditiously advance both onshore and offshore transmission infrastructure investment planning and implementation”); RWE Renewables Americas, Preliminary Comments at 3 (“We . . . support the White Paper’s recommendation for continued study of alternative transmission networks and onshore transmission upgrades . . . RWE supports the White Paper’s recommendation to develop a feasibility study to gather information and to assess the potential of offshore wind development in Lake Erie and Lake Ontario”).

Practices.³⁴ We welcome the inclusion of these requirements in the July 2020 RFP,³⁵ and we join the New York Offshore Wind Alliance in urging the Commission to make them mandatory in all future offshore wind solicitations.³⁶ We also reiterate that the Commission should direct NYSERDA to undertake a study of the contracting mechanisms employed to date to evaluate their cost-efficacy for ratepayers and the need for additional or alternative contracting mechanisms in the future.

Clean Energy Advocates also support the July 2020 RFP's new requirement that Proposers take steps "to better understand and consider carbon intensity in design, sourcing and construction" and "to minimize embodied carbon from the proposed Project."³⁷ Improved mitigation of embodied carbon throughout the offshore wind supply chain and lifecycle will help achieve the reductions in greenhouse gas emissions required by the CLCPA.

The July 2020 RFP takes admirable steps to "actively support" the CLCPA's "target of delivering at least 35 percent of the overall benefits from New York State's climate programs to Disadvantaged Communities."³⁸ In particular, the solicitation includes a "stated prioritization of benefits, including job creation, to Disadvantaged Communities" within the evaluation criteria (weighted at 20%) for New York Economic Benefits.³⁹ Going forward, solicitations should continue to prioritize benefits to disadvantaged communities; provide additional clarity on the

³⁴ Clean Energy Advocates, Preliminary Comments at 12-14; Clean Energy Standard Principles at 3 (Dec. 17, 2019), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E93F0201-61A9-4C53-A36D-EAE5C4AE6E04}>

³⁵ NYSERDA, Request for Proposals ORECRFP20-1 (July 21, 2020), <https://portal.nyserra.ny.gov/servlet/servlet.FileDownload?file=00Pt000000NG9LMEA1>

³⁶ New York Offshore Wind Alliance, Preliminary Comments at 3, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D82211D2-F10C-449C-9537-46B865A0DF49}>

³⁷ ORECRFP20-1 at 28.

³⁸ NYSERDA, Request for Proposals ORECRFP20-1 at 27 (July 21, 2020), <https://portal.nyserra.ny.gov/servlet/servlet.FileDownload?file=00Pt000000NG9LMEA1>

³⁹ *Id.* at 28.

types of benefits considered; and incorporate any new guidance from the CLCPA’s Climate Justice Working and Just Transition Groups.⁴⁰

B. The Commission Should Adopt Mechanisms to Prevent Shortfalls in Offshore Wind Procurements

The White Paper outlines appropriately ambitious targets for offshore wind procurements, a proposal that should be reinforced by mechanisms to prevent chronic procurement shortfalls. Clean Energy Advocates agree that the Commission should formally adopt the CLCPA’s statewide goal of 9 GW of offshore wind by 2035 and authorize NYSERDA to procure all the ORECs necessary to achieve it. As noted by the Alliance for Clean Energy New York, the American Wind Energy Association, the Advanced Energy Economy Institute, and the Solar Energy Industries Association, progress toward the 9 GW requirement will bring “job creation, port development, economic stimulus, and clean renewable energy delivered into the grid at locations where there is high electricity demand.”⁴¹ Maximizing these benefits and reaching 9 GW will depend on making every year count.

Therefore, as stated in the Preliminary Comments,⁴² the Commission should consider several approaches to keeping NYSERDA on track in procuring 750-1,000 MW/year through 2027. At a minimum, the Commission should authorize NYERSDA to conduct a make-up solicitation in any calendar year when the first solicitation procures an amount below a certain

⁴⁰ In particular, solicitations should incorporate updated definitions of disadvantaged communities that the Climate Justice Working Group establishes. The July 2020 RFP, “acknowledging that New York State has not yet formally defined Disadvantaged Communities,” relies on “already-established criteria for communities that meet the spirit of the Disadvantaged Communities objectives of the CLCPA, including the prioritization of benefits to communities located in low-income census tracts, Potential Environmental Justice Areas, and New York Opportunity Zones.” *Id.* at 2.

⁴¹ Alliance for Clean Energy New York, American Wind Energy Association, Advanced Energy Economy Institute, & Solar Energy Industries Association, Preliminary Comments at 10, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={05B4296C-2BEF-44E1-AF10-272C445DEB0F}>.

⁴² Clean Energy Advocates, Preliminary Comments at 12-14.

threshold. More comprehensively, the Commission should require that NYSERDA meet a multi-year minimum—which would not impose a minimum procurement level “for any one solicitation,”⁴³ but would require NYSERDA to keep pace by conducting additional solicitations or increasing amounts procured in regular solicitations to meet a multi-year average of 750-1,000 MW/year. For example, the Commission could require that both the 2021-2023 and 2024-2026 three-year periods result in an average procurement level of at least 750 MW/year. The New York Offshore Wind Alliance has similarly called upon the Commission to “authorize the use of make-up solicitations” and “consider requiring a multi-year minimum to ensure the 9,000 MW target is met.”⁴⁴

C. NYSERDA Should Publicly Report and Explain Any Changes to Procurement Timing or Size

As noted by the New York Offshore Wind Alliance, NYSERDA can and should adjust “the timing and size of solicitations” based on considerations such as lease area availability, technological advancements, federal tax incentives, and other states’ solicitations.⁴⁵ That said, NYSERDA should publicly report and explain the basis for any such adjustments.

Clean Energy Advocates accordingly support the recommendation by the City of New York regarding reporting requirements: “while not setting minimum or maximum procurement levels for . . . offshore wind, the Commission should require NYSERDA to notify it via a public report if and when NYSERDA seeks to deviate substantially from the projections.”⁴⁶ Similarly, RWE Renewables Americas recommends that if the Commission “grants NYSERDA the

⁴³ White Paper at 39.

⁴⁴ New York Offshore Wind Alliance, Preliminary Comments at 4, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D82211D2-F10C-449C-9537-46B865A0DF49}>

⁴⁵ *Id.* at 3.

⁴⁶ City of New York, Preliminary Comments at 21-22, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={39BCAF57-EF02-4839-B0BA-CE901E7FF3CD}>

requested flexibility to unilaterally adjust the timing and size of the procurements, then NYSERDA should have to show ‘good cause’ for any subsequent change(s).”⁴⁷ Avangrid similarly “recommends the publication of any anticipated changes to annual offshore wind procurement schedule in advance of any deviation from proposed trajectories with detailed reasoning for any changes.”⁴⁸ Clean Energy Advocates agree that these steps will help promote transparency and predictability.

D. Any ORECs Resold to the Voluntary Market Should Not Count Toward the 70 by 30 Target

The White Paper “recommends that the Commission grant NYSERDA authority to re-sell ORECs to non-LSE buyers, provided that it do so at a cost no less than it sells to LSEs.”⁴⁹ Clean Energy Advocates support this resale authority. However, as we have already noted in the Preliminary Comments concerning proposals for a competitive Tier 2 and a Tier 4, any ORECs sold to the voluntary market should not count toward the 70 by 30 Target given the CLCPA’s requirement that this obligation be satisfied solely by LSEs.⁵⁰ We join the Alliance for Clean Energy New York, the American Wind Energy Association, the Advanced Energy Economy Institute, and the Solar Energy Industries Association in applying this requirement to ORECs.⁵¹

⁴⁷ RWE Renewables Americas, Preliminary Comments at 3, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1A483AF5-E64A-455B-B4E5-22EC1FE2B03A}>

⁴⁸ Avangrid, Preliminary Comments at 9-10, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6AF06073-1003-4E44-905F-7AC6F63B47DC}>

⁴⁹ White Paper at 41.

⁵⁰ Clean Energy Advocates, Preliminary Comments at 18-19, 24-25 (emphasizing that PSL § 66-p(2), added by CLCPA § 4, requires that 70% of “electric generation *secured by jurisdictional LSEs*” be generated by renewable energy systems by 2030 (emphasis added)).

⁵¹ Alliance for Clean Energy New York, American Wind Energy Association, Advanced Energy Economy Institute, & Solar Energy Industries Association, Preliminary Comments at 11, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={05B4296C-2BEF-44E1-AF10-272C445DEB0F}>

V. Tier 4

Clean Energy Advocates emphasize our support for the goal of incentivizing more renewable energy that is deliverable into the New York City area, which hosts many of the State’s oldest and most highly polluting fossil generating units. Preliminary comments demonstrated a widespread consensus around the importance of increasing renewable energy delivery to Zone J.⁵² We share the view that the updated CES should include mechanisms specifically directed at decarbonizing New York City’s electric system, which will be necessary to achieve the ambitious CLCPA electric sector targets and provide significant public health benefits to disadvantaged communities long burdened by pollution from nearby peaker plants. In these final comments, we reiterate several recommendations made in the Preliminary Comments for refining the Tier 4 proposal.

First, eligibility requirements must be robust to ensure that the Tier 4 program provides actual environmental and economic benefits. The supplier energy baseline should be at least as high as NYCA deliveries in the most recently reported year—not the proposed three-year average. Because Canadian hydropower exports to the United States have steadily risen in recent

⁵² See, e.g., Alliance for Clean Energy New York, American Wind Energy Association, Advanced Energy Economy Institute, & Solar Energy Industries Association, Preliminary Comments at 11 (“The renewable energy industry understands and shares the goal of increasing renewable energy delivery Downstate in order to change the status quo that Zones F-K account for two-thirds of New York State’s electricity demand but have significantly less deployment of renewable energy than the Upstate region . . . Reducing fossil fuel use for power generation in New York City is a requirement to improving air quality and public health, an imperative made more stark by the impact of COVID-19 on the City’s population”); City of New York, Preliminary Comments at 4 (“Actions must also be taken in New York City to reduce reliance on fossil fuel combustion for electricity generation and improve air quality and public health. The proposed Tier 4 program is a positive action to reduce carbon and other harmful air emissions throughout New York City”); Invenery, Preliminary Comments at 4 (“Given the significant challenge in a state where the majority of the renewable electricity is generated upstate and the majority of the load is downstate, Invenery applauds the White Paper for proposing a solution to deliver renewables into Zone J”); oneGrid, Preliminary Comments at 2 (“We believe the Tier 4 program presents a compelling mechanism necessary to incent the scale of development of transmission and renewable generation resources that will be required to meet the objectives set by New York State through the CLCPA”).

years, a three-year average could understate the future deliveries that would occur in the absence of a new Tier 4. The supplier greenhouse gas baseline requirement should be verified through a robust accounting mechanism to preserve the climate integrity of the program. Tier 4 eligibility requirements should also exclude deliveries enabled by any actions that result in flooding additional areas. Currently, the White Paper does not address how the two additionality baselines would interact with the provision “that Tier 4 be closed to any hydropower impoundment not already in existence or under construction.”⁵³ These eligibility requirements should be sharpened to require that new or expanded impoundments cannot be used to satisfy either additionality baseline, in order to prevent the potential for backfilling (e.g., induced development of new impoundments to serve non-NYCA load).

Second, as with ORECs and competitive Tier 2 RECs, NYSERDA should recognize that any resale of Tier 4 RECs to the voluntary market are not eligible to count toward the 70 by 30 Target. The CLCPA requires that “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.”⁵⁴ While Clean Energy Advocates support the expansion of voluntary REC markets, any voluntary purchases must be additional to this mandatory obligation on jurisdictional LSEs.

Third, the Tier 4 program should be carefully designed to avoid casting undue uncertainty on Tier 1 solicitations in the coming years. Given the ambitious 2030 and 2040 electric sector targets, the State will need strong and predictable signals from Tier 1 procurement schedules. We reiterate that aggressive, dependable Tier 1 procurement sizing will promote cost-effective

⁵³ White Paper at 48.

⁵⁴ PSL § 66-p(2) (emphasis added).

renewable energy investments and help the State remain on track to meet CLCPA goals, even in the face of uncertainties such as future electric load and project attrition rates.

The PSC should also consider ways to ensure that Tier 4 can support the development of intrastate transmission projects, which bring added New York benefits of new family-supporting jobs and careers, expanded local supply chain and economic development opportunities for communities, and direct increases in local tax bases. Tier 4 evaluation criteria should incorporate those considerations to encourage proposals that would deliver Tier 1, Tier 2, and offshore wind generation directly into Zone J.

Finally, Clean Energy Advocates join the City of New York and other stakeholders concerning the need for further analysis concerning the mechanics and rules regarding the implementation of Tier 4.⁵⁵ While the need for renewable energy that is deliverable into the New York City area is vitally important, the creation of a Tier 4 program and the rules governing it should be carefully considered and determined at the outset rather than left for implementation at a later date. Clean Energy Advocates recommend the Commission hold a technical conference on Tier 4 and issue a supplement to the White Paper that more fully discusses the issues raised by stakeholders in these comments. Once the supplement is issued, stakeholders should have the opportunity to review to offer comments and recommendations on it. While Clean Energy Advocates believe that the consideration of a Tier 4 program should not delay the issuance of an order concerning a program to achievement of the 70 by 30 Target, it is important that further analysis be done and that the parameters and rules concerning such a program are fully vetted by stakeholders, including the opportunity for public comment, before the Commission determines whether to implement Tier 4.

⁵⁵ See Preliminary Comments of the City of New York at 7-10.

VI. Tier 2

Clean Energy Advocates reiterate our support for a competitive Tier 2 program to sustain New York’s baseline renewable generation that might otherwise face viability problems or opt to sell environmental attributes to out-of-state markets.

A. The Commission Should Consider Alternatives to NYPA Eligibility for Tier 2 RECs

As discussed at length in the Preliminary Comments, NYPA’s request to participate in the Tier 2 program appears premature.⁵⁶ Currently available information remains limited as to whether such participation would be the least-cost approach to ensuring continued operation of NYPA’s hydroelectric facilities—resources that Clean Energy Advocates agree will be critical to achieving the 2030 and 2040 electric sector targets. We would welcome additional information from NYPA and opportunities for further stakeholder engagement on the costs and benefits of this proposal. In these final comments, we restate several alternatives to Tier 2 eligibility that could potentially address the concerns raised by NYPA at lower cost.

Based on NYPA’s comments to date in response to the NYSERDA Tier 2 petition, NYPA’s participation request appears grounded in three primary aims: 1) ensuring the continued financial viability of NYPA facilities; 2) preventing an unduly burdensome Tier 2 obligation on NYPA customers who already support the State’s renewable baseline; and 3) avoiding a competitive disadvantage in NYISO wholesale markets.⁵⁷

Regarding the first aim, we have noted that the Commission could consider extending Maintenance Tier eligibility to any NYPA resources that demonstrate a financial need and would

⁵⁶ Clean Energy Advocates, Preliminary Comments at 21-24.

⁵⁷ See Case 15-E-0302, Comments of the New York Power Authority (May 4, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F7F03C62-C468-4919-97F5-D1815CF17739}>; Reply Comments of the New York Power Authority (May 29, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={287EC8CE-DD8D-4381-A021-7B63AB9F9219}>

otherwise cease operation.⁵⁸ The second aim is accounted for in NYSERDA’s petition: as a non-jurisdictional LSE, NYPA could determine “that a different manner of support is more effective” than voluntarily assuming Tier 2 obligations.⁵⁹ We have requested further context on the third aim—specifically, how much “less often” NYPA hydroelectric units would be “selected to run in the [NYISO] markets” and the magnitude of any resulting “reduced dispatch” due to this “competitive disadvantage” relative to Tier 2-eligible resources.⁶⁰ We have also noted that this concern about NYISO market competitiveness could be addressed through more holistic reforms currently under consideration in the Resource Adequacy Proceeding to better align wholesale market design and the State’s clean energy mandates.⁶¹

Clean Energy Advocates respect the aims motivating NYPA’s participation request, but raise these alternatives because we share the concerns of other commenters about the potential cost impacts of Tier 2 eligibility for NYPA resources.⁶² Should the Commission determine that such eligibility is preferable to other alternatives, we again stress the importance of avoiding impacts on Commission jurisdictional ratepayers. After NYPA initially suggested having

⁵⁸ See Case 15-E-0302, Order Adopting Measures for the Retention of Existing Renewable Baseline Resources (Mar. 16, 2018).

⁵⁹ Case 15-E-0302, NYSERDA Petition Regarding Clean Energy Standard Competitive Tier 2 Program for Baseline Renewable Generation at 6, n.15 (Jan. 27, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D9032507-2912-40DE-B116-BCBA9DB0F4FE}>

⁶⁰ Case 15-E-0302, Reply Comments of the New York Power Authority at 2, 4.

⁶¹ Clean Energy Advocates, Preliminary Comments at 23.

⁶² See Alliance for Clean Energy New York, American Wind Energy Association, Advanced Energy Economy Institute, & Solar Energy Industries Association, Preliminary Comments at 10 (“If the Commission chooses to include NYPA hydropower generation in the Tier 2 baseline that aims to retain, it would then follow that NYPA could use it to meet a Tier 2 obligation. But this approach would also greatly increase the amount of Tier 2 resources that NYSERDA would need to procure and thus the obligation on NYPA and all LSEs. A simpler approach would follow the one proposed in the NYSERDA Tier 2 Petition with respect to NYPA participation”); Joint Utilities, Preliminary Comments at 2-3, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3F15C2A0-92CF-49D7-8E35-A35412246852}> (“The Joint Utilities question the public interest reason for allowing NYPA to participate in the Tier 2 solicitations and how a determination enabling NYPA participation would impact future solicitations as well as the overall cost to the public”).

“flexibility to participate in subsequent Tier 2 procurements,”⁶³ it later stated that “NYPA would not seek to participate in any subsequent Tier 2 solicitations unless the Commission and NYSERDA first determine that such participation would be in the best interest of New York ratepayers.”⁶⁴ We appreciate this commitment and reiterate its importance to avoid unanticipated increases to the Tier 2 obligations borne by New York ratepayers.

Under such a commitment not to participate in NYSERDA solicitations, NYPA would instead “retain and retire sufficient renewable attributes from its hydroelectric generation assets to meet the Tier 2 Program targets in accordance with its customers’ share of statewide load.”⁶⁵ Notably, this share of statewide load for which NYPA would retire Tier 2 RECs is much smaller than NYPA’s share of baseline renewable generation that would generate Tier 2 RECs.⁶⁶ NYPA seems to anticipate that other than its self-supply, excess Tier 2 RECs would come only from incremental power beyond its contractual allocations, and that this excess could be covered by the sale of “new voluntary green power products for its customers.”⁶⁷ However, it is not clear what the size of NYPA’s Tier 2 REC offering would be or where costs not borne by the voluntary market would ultimately fall. Any Commission decision on NYPA eligibility should address this issue and ensure that NYPA’s admirable commitment to avoid “any material impact on Commission jurisdictional ratepayers” is realistic—not dependent on assumptions of unprecedented growth in the voluntary market.⁶⁸

⁶³ Case 15-E-0302, Comments of the New York Power Authority at 5.

⁶⁴ Case 15-E-0302, Reply Comments of the New York Power Authority at 2-3.

⁶⁵ Case 15-E-0302, Comments of the New York Power Authority at 5.

⁶⁶ See Case 15-E-0302, Clean Energy Standard Final Phase 2 Implementation Plan at 3 (Dec. 18, 2017), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={24A31070-8733-4DAB-838B-BEB15D6C70C4}> (projecting NYPA load in 2020 and 2021 to be 14.29% of statewide load); White Paper at 5 (discussing “NYPA’s fleet of hydroelectric generators, which account for approximately 55% of the baseline amount of renewable generation resources”).

⁶⁷ Case 15-E-0302, Reply Comments of the New York Power Authority at 3.

⁶⁸ *Id.*

B. Any Sale by NYSERDA of Voluntary Tier 2 RECs to Non-Compliance Entities Should Not Count Toward the 70 by 30 Target

Regarding the resale of Tier 2 RECs to the voluntary market, Clean Energy Advocates again note that the CLCPA excludes voluntary REC purchases from counting toward the 70 by 30 Target.⁶⁹ Accordingly, NYSERDA’s Tier 2 procurement obligation to LSEs should not be reduced based on the projected size of the voluntary market.⁷⁰

VII. NYSERDA Should Continue Offering Fixed RECs Alongside Index RECs

Clean Energy Advocates support the availability of an Index REC price option, which can lower costs for ratepayers and set clear expectations for developers. We restate our recommendation that NYSERDA continue to solicit Fixed REC bids alongside any future offerings of the Index REC option. As discussed in the Preliminary Comments, preserving the availability of the Fixed REC option (a payment mechanism without any link to prices in FERC-jurisdictional wholesale markets) could help reduce the risk of litigation over preemption challenges.⁷¹

VIII. NYSERDA Should Not Cure NYPA’s ZEC Deficit by Raiding Clean Energy Funds

Several commenters have expressed opposition to the White Paper’s proposed approach to the problem of “uncollectible” NYPA load that has accrued a \$34 million ZEC payment deficit.⁷² As noted in those preliminary comments, the Energy Efficiency Portfolio Standard,

⁶⁹ PSL § 66-p(2), added by CLCPA § 4, requires that 70% of “electric generation *secured by jurisdictional LSEs*” be generated by renewable energy systems by 2030.

⁷⁰ Clean Energy Advocates, Preliminary Comments at 24-25.

⁷¹ Clean Energy Advocates, Preliminary Comments at 25-27.

⁷² *See, e.g.*, Clean Energy Advocates, Preliminary Comments at 27; Joint Utilities, Preliminary Comments at 2; Alliance for a Green Economy, Preliminary Comments at 6, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={6F4C6ED2-BA87-4A1D-ABA0-9CECB7E364DF}>

Renewable Portfolio Standard, and Systems Benefit Charge funds should not be diverted away from their purpose of supporting renewable energy deployment and energy efficiency improvements. Clean Energy Advocates reiterate our opposition to any raiding of these funds to subsidize nuclear energy.

Respectfully submitted on the 31st day of August 2020.

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