

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**In the Matter of Offshore Wind Energy**

**Case 18-E-0071**

**Proceeding on Motion of the Commission to  
Implement a Large-Scale Renewable Program  
and a Clean Energy Standard**

**Case 15-E-0302**

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**SUPPLEMENTAL COMMENTS OF  
MULTIPLE INTERVENORS AND THE  
MUNICIPAL ELECTRIC UTILITIES ASSOCIATION  
OF NEW YORK STATE**

**(I.D. Nos. PSC-26-23-00002-P; PSC-26-23-00003-P; and PSC-26-23-00004-P)**

**Dated: September 6, 2023**

## PRELIMINARY STATEMENT

Multiple Intervenors<sup>1</sup> and the Municipal Electric Utilities Association of New York State<sup>2</sup> (“MEUA;” together, the “Customer Advocates”) hereby submit these Supplemental Comments to the New York State Public Service Commission (“Commission”) with regards to the “(O)REC Petitions” filed in Cases 15-E-0302 and 18-E-0071,<sup>3</sup> and comments recently submitted in response thereto.

As discussed below, comments recently filed by the New York Energy Research and Development Authority (“NYSERDA”) estimated the change in contract strike prices that would result from contract modifications requested by Petitioners.<sup>4</sup> Those estimated strike price increases may be combined with public information contained in the OSW Petitioners’ respective OREC Agreements to estimate that the relief requested by Sunrise Wind and Empire, if granted, would impose incremental costs on customers of approximately **\$37.7 billion**.

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<sup>1</sup> Multiple Intervenors is an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State.

<sup>2</sup> The MEUA is an association of 40 municipal corporations that operate municipal electric utilities in New York State. MEUA was formed to foster and advance the efficient operation of publicly owned and operated electric systems for public service. It is operated for the benefit of all members.

<sup>3</sup> Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Petition of the Alliance for Clean Energy New York to Address Post COVID-19 Impacts on Renewable Development Economics and Contract Considerations (filed June 7, 2023) (“ACENY Petition”); Cases 15-E-0302, *supra*, and 18-E-0071, In the Matter of Offshore Wind Energy, Verified Petition of Sunrise Wind LLC for an Order Authorizing the New York State Energy Research and Development Authority to Amend the Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement (filed June 7, 2023) (“Sunrise Wind Petition”), and Verified Petition for Expedited Approval of Enhanced Offshore Renewable Energy Credits (filed June 7, 2023) (“Empire Petition”). The Sunrise Wind Petition filed by Sunrise Wind, and the Empire Petition filed by Empire, are referred to herein as the “OSW Petitions” and the “OSW Petitioners.” The term “Petitioners” as used herein refers to ACENY and the OSW Petitioners. Also, contracts for the purchase and sale of renewable energy certificates (“RECs”) and offshore wind RECs (“ORECs”) are referred to herein as REC Agreements and OREC Agreements, individually, and “(O)REC Agreements,” collectively.

<sup>4</sup> Cases 15-E-0302 and 18-E-0071, *supra*, NYSERDA Comments on Petitions Requesting Price Adjustments to Existing Contracts (filed August 28, 2023) (“NYSERDA Comments”).

NYSERDA's comments prove both too much and too little. NYSERDA demonstrates two things conclusively. First, the Customer Advocates' deliberately conservative estimates of consumer costs that would result from the Petitions are drastically too low. Second, there is no record evidence in this proceeding sufficient to support *any* modification to the contracts at issue. As detailed below, Petitioners request approximately \$37.7 billion of incremental customer funding to fulfill their existing contractual obligations. NYSERDA discusses two alternative approaches, both of which would impose somewhat lesser incremental costs on customers. What is lacking, however, is a demonstration that any of the three amounts discussed (or any other number for that matter) represents the minimum amount required to ensure individual project viability. While it may seem administratively-efficient to pick a formula that seems to yield the lowest number presented, the Commission should require much more before deciding whether to impose tens of billions of incremental costs on customers and the public interest requires more protection than would be accorded by the use of a single, generic formula that is devoid of any factual linkage to specific contracts or projects. Customer Advocates submit that the Commission's statutory obligation to ensure safe and adequate service at just and reasonable rates requires either denying the Petitions or, if not, a project-by-project analysis that tailors whatever relief might be provided to a developer's actual need.

As explained below, it appears that the OSW Petitioners and ACENY are requesting approximately **\$48.4 billion** of total, increased compensation as follows:<sup>5</sup>

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<sup>5</sup> Two additional petitions included in the table are seeking incremental customer compensation. These petitions are pending before the Commission and subject to separate comment deadlines. *See* Case 15-E-0302, *supra*, Petition of Clean Path New York LLC to Address Post-COVID Impacts and Associated Considerations Concerning the Tier 1 Eligible Generation Component of its Clean Energy Standard Tier 4 Renewable Energy Certificate Contract (filed June 14, 2023) ("CPNY Petition"); and Cases 15-E-0302 and 18-E-0071, *supra*, Verified Joint Petition and Comments of CHPE LLC and H.Q. Energy Services (U.S.) Inc. Seeking Program-Wide Modification of Renewable Energy Certificate Purchase and Sale Agreements (filed August 28, 2023) ("CHPE Petition").

<b>Project</b>	<b>Estimated Incremental Relief Requested</b>
Beacon Wind	\$14.5 billion
Empire Wind 1	\$6.2 billion
Empire Wind 2	\$13.4 billion
Sunrise Wind	\$3.6 billion
ACENY	\$10.69 billion
<b>Sub-Total:</b>	<b>\$48.39 billion</b>
Clean Path NY	unknown
CHPE	unknown
<b>Total:</b>	<b>unknown</b>

These amounts refer only to the incremental compensation sought by Petitioners.<sup>6</sup> They do not include the cost of the existing, executed contracts, which are very expensive in their own right and are much more costly than market power, nor do they include the unknown, incremental costs associated with the CPNY and CHPE Petitions.

NYSERDA discussed two potential alternative forms of contract modification that, if approved and implemented, apparently would impose still-exorbitant incremental customer costs of approximately **\$20.8 billion to \$26.0 billion**, depending on the methodology selected.

Notwithstanding NYSERDA’s important and helpful additions to the public record, critical gaps remain that must be filled to provide transparency and a record basis for any Commission decision. The public interest demands such transparency. Indeed, transparency is particularly important here, given that commenters representing a diverse range of interests detailed inconsistencies, omissions, and inequities in the Petitions that warrant a complete denial

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<sup>6</sup> Cases 15-E-0302 and 18-E-0071, *supra*, Joint Utilities’ Comments in Response to Petitions for Contract Amendments (filed August 28, 2023) at 4 (“JU Comments”). The Joint Utilities note that ACENY estimated that its requests, if granted, would increase customer-funded compensation by approximately \$5.8 billion on a net present value (“NPV”) basis, but the total estimated cost impact would be approximately \$10.69 billion. The larger value is used above because it is comparable to the other estimates included herein, which are not expressed on an NPV basis.

of the ACENY, Empire, and Sunrise Wind requests for relief. Significantly, those comments also explain how the State can remain on track to achieve the Climate Leadership and Community Protection Act (“CLCPA”) mandates even if the Petitions are denied.

## COMMENTS

### POINT I

#### **THE COMMISSION SHOULD DENY PETITIONERS’ REQUESTS FOR TENS OF BILLIONS OF DOLLARS OF INCREASED CUSTOMER-FUNDED COMPENSATION, AND PROVIDE TRANSPARENCY REGARDING THE AMOUNTS AND THE IMPACTS OF THE RELIEF REQUESTED**

The (O)REC Petitions were filed with significant omissions and redactions that had the effect of shielding from public view the amount of relief requested therein.<sup>7</sup> Multiple Intervenors sought to fill in some of the gaps relating to the amount of, and justification for, the relief requested by filing jointly with the City of New York (“City”) a Motion to Compel Disclosure,<sup>8</sup> and serving information requests on ACENY, Sunrise Wind, and Empire. Sunrise Wind and Empire responded to the Motion to Compel Disclosure by filing less-redacted versions of their petitions.<sup>9</sup> Sunrise Wind’s less-redacted petition disclosed the proposed change in strike price – an increase of \$27.50/MWh – that the company estimated would result from the contract modifications it requested.<sup>10</sup> Empire provided some additional cost information in its less-redacted

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<sup>7</sup> ACENY did include an estimate of the incremental cost associated with its requested relief. Given the various assumptions reflected in that analysis, however, it is not clear whether the estimate is reasonably accurate or materially under-estimates the potential customer impacts.

<sup>8</sup> Cases 15-E0302 and 18-E-0071, *supra*, Motion to Compel Disclosure of Multiple Intervenors and the City of New York (filed July 27, 2023).

<sup>9</sup> References to the Sunrise Wind Petition and Empire Petition relate to the less-redacted petitions filed in these dockets on August 4, 2023.

<sup>10</sup> Sunrise Wind Petition at 37-38.

filing but still failed to disclose information sufficient for parties to readily understand the amount of incremental funding requested in the Empire Petition. Customer Advocates therefore used the change in strike price estimated by Sunrise Wind as a conservative proxy value to calculate that the OSW Petitioners alone (*i.e.*, excluding projects covered by the ACENY Petition) were requesting more than \$20 billion of incremental customer funding.<sup>11</sup>

Although NYSERDA did not estimate the amount of incremental customer funding that Petitioners are requesting, its submission herein demonstrates that Customer Advocates' assumptions *dramatically under-estimated* the amount of increased compensation that Empire Wind, Beacon Wind, and Sunrise Wind actually are requesting. Using the changes in strike price presented in NYSERDA's comments together with public information available in the OSW Petitioners' respective OREC Agreements, it now appears that the OSW Petitioners collectively are requesting an additional **\$37.7 billion** of customer funding above and beyond the value of their existing contracts (and excluding the relief requested in the petitions filed by ACENY, Clean Path NY, and CHPE):

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<sup>11</sup> Cases 15-E-0302 and 18-E-0071, *supra*, Comments of Multiple Intervenors and the Municipal Electric Utilities Association of New York State (dated August 28, 2023) at 19-22 ("Customer Advocates Comments").

**Table 1. Estimated Cost Impact of OSW Petitions.**<sup>12</sup>

	Original Strike Price (\$/MWh)	Adjusted Strike Price (\$/MWh)	Strike Price Increase (\$/MWh)	Annual OREC Cap (MWh)	Incremental Annual Cost Increase	Contract Tenor (years)	Total Incremental Cost
	A	B	C = B - A	D	E = C * D	F	G = E * F
<b>Empire Wind 1</b>	\$ 118.38	\$ 159.64	\$ 41.26	5,005,000	\$ 206,506,300	30	\$ 6,195,189,000
<b>Empire Wind 2</b>	\$ 107.50	\$ 177.84	\$ 70.34	6,341,610	\$ 446,068,847	30	\$ 13,382,065,422
<b>Beacon Wind</b>	\$ 118.00	\$ 190.82	\$ 72.82	6,619,910	\$ 482,061,846	30	\$ 14,461,855,386
<b>Sunrise Wind</b>	\$ 110.37	\$ 139.99	\$ 29.62	4,861,780	\$ 144,005,924	25	\$ 3,600,148,090
<b>TOTAL =</b>					\$ 1,278,642,917		\$ 37,639,257,898

As a potential alternative to the contract adjustments proposed by the OSW Petitioners, NYSERDA estimated the change in strike prices that would result from applying the adjustment mechanisms used in NYSERDA’s third OSW solicitation, ORECRFP22-1 (the “NY3 Formula”). NYSERDA explains that a total weighting coefficient of 80% is applied to the entire NY3 Formula (*i.e.*, the formula output is reduced by 20%).<sup>13</sup> Again, however, NYSERDA did not estimate the amount of incremental customer funding that the OSW Petitioners would receive if the Commission were to approve this methodology. As shown on Table 2, Customer Advocates used NYSERDA’s estimates of the change in strike prices resulting from the NY3 Formula weighted at 80% to calculate that this alternative adjustment would result in incremental customer costs of approximately **\$20.8 billion**:

<sup>12</sup> NYSERDA Comments at Tables 5 and 22. Customer Advocates assumed a 30-year contract term for the Empire projects to account for their proposal to increase the contract lengths by 5 years. The Annual OREC Cap for each project was obtained from the project’s OREC Agreement with NYSERDA.

<sup>13</sup> NYSERDA Comments at 36.

**Table 2. Estimated Cost Impacts Using NY3 Formula at 80%.<sup>14</sup>**

	Original Strike Price (\$/MWh)	Adjusted Strike Price (\$/MWh)	Strike Price Increase (\$/MWh)	Annual OREC Cap (MWh)	Incremental Annual Cost Increase	Contract Tenor (years)	Total Incremental Cost
	A	B	C = B - A	D	E = C * D	F	G = E * F
<b>Empire Wind 1</b>	\$ 118.38	\$ 148.26	\$ 29.88	5,005,000	\$ 149,549,400	25	\$ 3,738,735,000
<b>Empire Wind 2</b>	\$ 107.50	\$ 147.79	\$ 40.29	6,341,610	\$ 255,503,467	25	\$ 6,387,586,673
<b>Beacon Wind</b>	\$ 118.00	\$ 162.23	\$ 44.23	6,619,910	\$ 292,798,619	25	\$ 7,319,965,483
<b>Sunrise Wind</b>	\$ 110.37	\$ 138.22	\$ 27.85	4,861,780	\$ 135,400,573	25	\$ 3,385,014,325
<b>TOTAL =</b>					\$ 833,252,059		\$ 20,831,301,480

As a second alternative, NYSERDA estimated the change in strike prices that would result if the NY3 formula is applied with a 100% weighting (*i.e.*, the adjustment is not reduced by 20%).<sup>15</sup> NYSERDA did not estimate the incremental customer costs associated with this change, but Customer Advocates used NYSERDA’s estimates with the OSW Petitioners’ OREC Agreements to estimate that this adjustment, if approved and implemented, would result in incremental customer costs of approximately **\$26.0 billion**:

<sup>14</sup> NYSERDA Comments at 35-36 and Tables 18 and 22. For purposes of this estimate, Customer Advocates assume that Empire’s proposal to increase the tenor of its contracts by 5 years is rejected. If, however, that proposal is granted and the other assumptions presented in Table 2 apply, then the incremental customer cost impact would be approximately **\$24.3 billion**.

<sup>15</sup> NYSERDA Comments at 36-37 and Tables 20 and 22.

**Table 3. Estimated Cost Impacts Using NY3 Formula at 100%.<sup>16</sup>**

	Original Strike Price (\$/MWh)	Adjusted Strike Price (\$/MWh)	Strike Price Increase (\$/MWh)	Annual OREC Cap (MWh)	Incremental Annual Cost Increase	Contract Tenor (years)	Total Incremental Cost
	A	B	C = B - A	D	E = C * D	F	G = E * F
<b>Empire Wind 1</b>	\$ 118.38	\$ 155.72	\$ 37.34	5,005,000	\$ 186,886,700	25	\$ 4,672,167,500
<b>Empire Wind 2</b>	\$ 107.50	\$ 157.87	\$ 50.37	6,341,610	\$ 319,426,896	25	\$ 7,985,672,393
<b>Beacon Wind</b>	\$ 118.00	\$ 173.29	\$ 55.29	6,619,910	\$ 366,014,824	25	\$ 9,150,370,598
<b>Sunrise Wind</b>	\$ 110.37	\$ 145.18	\$ 34.81	4,861,780	\$ 169,238,562	25	\$ 4,230,964,045
<b>TOTAL =</b>					\$ 1,041,566,981		\$ 26,039,174,535

The foregoing estimates indicate that the potential contract modifications that have been proposed could impose on customers incremental costs of at least \$20.8 billion, and as much as approximately \$37.6 billion. Importantly, these estimates do not account for (i) the approximately **\$10.69 billion** of total customer costs that would result if ACENY’s Petition is approved,<sup>17</sup> (ii) the likely billions of dollars of increased compensation that the CPNY Petition requested for the generators selected to participate in that Tier 4 project, or (iii) the likely billions of dollars of increased compensation that developers of the Champlain Hudson Power Express Project (“CHPE Project”) requested recently.<sup>18</sup> (Customer Advocates and other parties noted in their comments that other developers will come to the Commission hat in hand seeking increased

<sup>16</sup> *Id.* at Tables 20 and 22. For purposes of this estimate, Customer Advocates assumed that Empire’s proposal to increase the tenor of its contracts by 5 years is rejected. If, however, that proposal is granted and the other assumptions presented in Table 2 apply, then the incremental customer cost impact would be approximately **\$30.4 billion**.

<sup>17</sup> ACENY Petition, Affidavit at P80; JU Comments at 4. As explained above, the Joint Utilities note that the \$5.8 billion estimate is a net present value of the total estimated customer cost impact, whereas \$10.69 billion is the total estimated cost impact.

<sup>18</sup> *See generally*, CHPE Petition. CHPE LLC and H.Q. Energy Services (U.S.) Inc. (“HQUS”) ask that the Commission rule on their petition at the same time requested by ACENY and the OSW Petitioners – *i.e.*, at the Commission’s public session scheduled to be held on October 12, 2023. (*Id.* at 25.) Customer Advocates note that, in making this request, HQUS inappropriately seeks to exempt its petition from the standard 60-day notice and comment period required under the State Administrative Procedure Act.

customer-funded subsidies if the Commission considers granting such extraordinary relief.<sup>19</sup> CHPE’s petition proves this point.) The Commission should not lose sight of the primary issue before it, which is not how much incremental compensation would appease the numerous petitioning developers but, rather, whether the competitive solicitation process should be abandoned, and what is fair, just, and reasonable for customers (who, at the end of the day, are left footing the bill for each of these long-term contracts).

It also is important to note that NYSERDA conducted a project-by-project analysis of the “Under Development Projects” for which ACENY requests relief, and presented its estimates of the increases in strike prices for projects selected in each Tier 1 solicitation.<sup>20</sup> NYSERDA did not report on the dollar value of those changes, however, and that essential information thus remains absent from the public record. Moreover, although NYSERDA provides an Appendix with a list of Awarded Tier 1 projects, it does not identify the company that owns each project or the amount of incremental compensation each company would realize if the Commission grants some measure of relief. This information also is necessary to inform the public record.

Customer Advocates submit that the responsibility to calculate and present the cost impacts of the relief requested falls on Petitioners in the first instance.<sup>21</sup> The changes in strike prices and incremental customer costs associated with their requests is critical information that

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<sup>19</sup> See, e.g., Customer Advocates Comments at 28; Case 15-E-0302, *supra*, Comments of Rise Light & Power, LLC on the Petition of the Alliance for Clean Energy New York to Address Post COVID-19 Impacts on Renewable development Economics and Contract Considerations (dated August 28, 2023) at 9-10 (“Rise Comments”).

<sup>20</sup> NYSERDA Comments at 20-21, 35, 37.

<sup>21</sup> Customer Advocates acknowledge that ACENY included in its Petition an estimate of the increased customer costs that would result from its proposals. NYSERDA independently calculated the cost of ACENY’s proposals and estimated the incremental cost of modifying the REC Agreements using different methodologies. It is important to include the dollar value of those estimates clearly in the public record, particularly given that analyses and information provided by NYSERDA should inform the public and support the Commission’s decisionmaking.

must be in the public record to inform parties and customers of the requests being made and to provide a record basis for the Commission to issue a decision on the Petitions. The customers who would be required to pay for these exorbitant increases have a right to know the amounts and the impacts of the requests. A lack of transparency as to costs could have a corrosive effect on public trust in the process and potential outcomes. Customer Advocates thus respectfully urge the Commission to specify in its Order (i) the actual value, in dollars, of relief requested by Petitioners (on an annual and total basis), (ii) the actual value, in dollars, of any relief that may be granted notwithstanding the opposition of Customer Advocates and other parties (again, on an annual and total basis), and (iii) the identity of each company receiving increased compensation and the amount of such relief.

The Commission's Order on the Petitions also should include a complete rate impact analysis. NYSERDA presented in its Comments estimated monthly bill impacts caused by the proposed (O)REC contract modifications only for an average residential customer. This analysis is essential for transparency but it is incomplete as presented because it focuses on one customer class and ignores all other customer classes, notwithstanding that all customer types would be paying for any contract modifications authorized herein (as well as the costs of the underlying contracts and numerous other, expensive programs and initiatives being mandated by the Commission).

A more complete analysis also is necessary because the impact to individual non-residential customers would be far more severe than the impact to individual residential customers given that the costs of (O)REC purchases currently are recovered from customers on a volumetric basis. This methodology has a disproportionate impact on large end-users, particularly energy-intensive customers, many of which operate facilities in other states and countries. NYSERDA

estimates that the relief requested by ACENY, Empire, and Sunrise Wind would increase the average residential monthly bill by approximately \$4.66, or approximately \$56 per year.<sup>22</sup> Assuming that the average residential customer uses 600 kWh per month,<sup>23</sup> then Petitioners' requested relief would increase customer bills by \$0.00777/kWh. The largest non-residential customer modeled in the CLCPA Report uses 1,296,000 kWh per month.<sup>24</sup> Assuming that Petitioners' requests for relief also would increase this large non-residential customer's bills by approximately \$0.00777/kWh, it would incur increased monthly costs of approximately \$10,070, or approximately \$120,840 per year. Furthermore, there are many large non-residential customers that consume more electricity as part of their operations and would experience even greater impacts under the relief requested herein.

Similarly, municipal utility customers would experience impacts far greater than those modeled by NYSERDA. Because municipal rates are, on average, much lower than the numbers used by NYSERDA, equivalent increases on a dollar basis would produce much larger percentage impacts.

The foregoing illustrates why it is imperative for the rate impact analysis to be representative of **all** customers. Customer Advocates thus request that the Commission include in its Order on the Petitions a rate impact analysis that follows the same format as that presented in the CLCPA Report.

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<sup>22</sup> NYSERDA Comments at 40-41. NYSERDA estimated that Empire's requested relief would increase the average monthly residential bill by \$2.69, ACENY's requested relief would increase the average monthly residential bill by \$1.57, and Sunrise Wind's requested relief would increase the average monthly residential bill by \$0.40. (*Id.* at 41.)

<sup>23</sup> Case 22-M-0149, *Proceeding on Motion of the Commission Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act*, New York State Department of Public Service First Annual Informational Report on Overall Implementation of the Climate Leadership and Community Protection Act (dated July 20, 2023) at 27, Table 7 ("CLCPA Report") (presenting a rate impact analysis which assumes the average residential customer uses 600 kWh per month).

<sup>24</sup> *Id.*

Finally, these requests for transparency and information serve the public interest and also comport with recent guidance issued by the New York State Comptroller. Specifically, in a report titled “Renewable Electricity in New York State,” the Comptroller stated that:

...the State will have to consider and be transparent about the costs of this transition to the State’s electric customers. The costs of incentives to encourage renewable siting and the costs of transmission projects approved by the PSC are integrated into electric bills and care must be taken to hold down those costs.<sup>25</sup>

## **POINT II**

### **COMMENTS RESPONSIVE TO THE PETITIONS DEMONSTRATE THAT THE CLCPA OBJECTIVES CAN BE ACHIEVED IF THE PETITIONS ARE DENIED**

Comments opposing the Petitions were filed by a broad cross-section of parties representing the diverse (and, at times, adverse) interests of customers,<sup>26</sup> utilities,<sup>27</sup> and developers.<sup>28</sup> NYSERDA also explained that the Petitions include significant flaws. Those comments individually and collectively detail the substantial omissions, inconsistencies, and inequities that should compel the complete denial of the Petitions.

It is significant that the comments opposing the Petitions – particularly those filed by AES and Rise – also explain how the Commission can deny Petitioners’ requests *and* keep the State on track to achieve the CLCPA mandates. The course of action they describe belies

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<sup>25</sup> *Renewable Electricity in New York State – Review and Prospects*, New York State Comptroller Thomas P. DiNapoli (issued August 2023) at 3, available at <https://www.osc.state.ny.us/files/reports/pdf/renewable-electricity-in-nys.pdf>.

<sup>26</sup> *See generally* Customer Advocate Comments; Case 15-E-0302, *supra*, Comments of Nucor Steel Auburn, Inc. Opposing a Requested Renewable Energy Credit “Adjustment Mechanism” Designed to Increase Payments to Existing Tier 1 Contract Holders (dated August 28, 2023).

<sup>27</sup> *See generally* JU Comments.

<sup>28</sup> *See generally* Rise Comments; Case 15-E-0302, *supra*, Comments of AES Clean Energy, LLC on Petition of the Alliance for Clean Energy New York to Address Post COVID-19 Impacts on Renewable Development Economics and Contract Considerations (dated August 28, 2023) (“AES Comments”).

Petitioners' arguments (and threats) that increased customer-funded subsidies are necessary for the State to meet its targets. Customer Advocates believe that denying the Petitions and issuing new competitive solicitations as necessary to procure renewable generation is the more cost-effective option to balance the interests of customers and developers while satisfying State policy objectives and preserving the sanctity of the competitive solicitation process and the executed contracts that resulted therefrom.

If, however, the Commission elects to grant Petitioners some amount of increased compensation, then it also should adopt the additional terms and conditions recommended by NYSERDA, Joint Utilities, AES, and Rise to better allocate the costs and risks of project development and to capture potential future benefits for customers. Given that Petitioners seek increased customer-funded compensation without offering any additional consideration in exchange for those subsidies, it is reasonable for the Commission to dictate the consideration that would attach to any increased customer funding that it awards to these developers.

### **POINT III**

#### **THE COMMISSION MUST CONSIDER HOW ITS DECISION WILL IMPACT FUTURE SOLICITATIONS FOR CLEAN ENERGY**

Petitioners presented a selective and one-sided argument for relief through a non-competitive process. Their respective filings do not present a balanced discussion of circumstances or opportunities that could offset increased costs. Such examples include, but are not limited to, increased revenues from switching to larger turbines and federal programs offering financial support for renewables development.<sup>29</sup> Petitioners now seek material changes to their

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<sup>29</sup> See, e.g., AES Comments at 12 (discussing potential financial benefits for renewable developers created by the Inflation Reduction Act).

(O)REC Agreements, without offering any new consideration in return and according to a process and timeline that does not allow for testing Petitioners' claims or fact finding. If the Commission considers any action other than denying the Petitions and directing NYSERDA to conduct competitive solicitations as needed to replace developers that terminate their contracts, it must carefully and objectively weigh how that decision would impact future procurements.

Comments filed by numerous parties addressed this issue, explaining that granting the Petitions in whole or in part would undermine (if not eviscerate) future competitive solicitations. Parties noted that granting such relief would encourage future bidders to submit unreasonably-low bids to increase their likelihood of selection for an award, with the expectation that they can request, and receive, the higher level of compensation they actually need at a later date.<sup>30</sup> The Joint Utilities explained that approving the Petitions would lead developers to “understand that they should price their project proposals at a level that will secure a NYSERDA contract regardless of whether the financial terms make a project viable.”<sup>31</sup> Rise similarly concluded that developers who take a more conservative approach to project pricing in order to better account for project risk and uncertainty would be disadvantaged during future solicitations.<sup>32</sup> Commenters noted that granting the contract adjustments is an anti-competitive process that would be unfair to bidders who were not selected in prior solicitations despite potentially submitting bids that better reflected market risks and would remain viable today, and at lower costs than Petitioners’

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<sup>30</sup> Customer Advocates Comments at 27; JU Comments at 9 (explaining that approving the Empire Petition “would set the precedent that developers can seek adjustment to contract terms outside of the competitive process after a contract is awarded”); AES Comments at 18 (approving the Petitions “could set a negative precedent that encourages anti-competitive market bidding behavior in a competitive solicitation”); Rise Comments at 10 (noting that “[d]evelopers would likely incorporate the promise of Commission bailout into future bids, discounting any project cost risk, and propose pricing that is low enough to win the solicitation but insufficient to weather potential price increases,” which would lead NYSERDA “to select riskier projects that take a cavalier approach to project costs” and likely “generate new calls” for contract adjustments).

<sup>31</sup> JU Comments at 8.

<sup>32</sup> Rise Comments at 10.

proposed contract modifications.<sup>33</sup> AES further explained that the anti-competitive dynamic created by granting Petitioners’ requests would “create uncertainty that could discourage developers from undertaking the challenge of building renewable energy projects in New York.”<sup>34</sup> Moreover, Rise argued that granting the one-sided contract modifications through a non-competitive re-pricing scheme would be inconsistent with State contracting principles<sup>35</sup> (which could render the State susceptible to increased uncertainty due to litigation).

Consequently, in addition to evaluating on a holistic basis – meaning, with consideration of the other cost drivers affecting electric utility rates – how granting any form of relief would impact customers, the Commission also must consider how its decision would impact the credibility of the competitive procurement process it has relied on for achieving the State’s renewable energy objectives. Granting Petitioners’ requests would harm customers, harm bidders in previous and current solicitations who are competing for awards under a different set of rules than Petitioners seek to have applied to themselves, and it would be inconsistent with the State’s own procurement standards. Customer Advocates submit that it would not be rational to choose these outcomes when multiple parties have explained how the Commission could deny the Petitions while keeping the State on track to achieve the CLCPA mandates. Significantly, that pathway also would afford the Petitioners an opportunity to compete for the increased compensation they claim to need.

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<sup>33</sup> JU Comments at 8; AES Comments at 16; Rise Comments at 7-8.

<sup>34</sup> AES Comments at 18.

<sup>35</sup> Rise Comments at 10-11.

**CONCLUSION**

For the reasons detailed above, Customer Advocates affirm their opposition to the Petitions and respectfully urge the Commission to include in its Order on the Petitions (i) the amounts, in dollars, of relief requested and granted (if any), and (ii) a rate impact analysis that considers all customers. If the Commission awards Petitioners any amount of increased compensation, then it also should impose additional terms and conditions consistent with those recommended by NYSERDA, Joint Utilities, AES, and Rise.

Dated: September 6, 2023  
Albany, New York

Respectfully submitted,

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