STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Case 15-E-0302 - Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

REPLY COMMENTS OF AES CLEAN ENERGY, LLC

ON

REPLY COMMENTS OF THE ALLIANCE FOR CLEAN ENERGY NEW YORK, INC. CONCERNING ITS PETITION ADDRESSING POST COVID-19 IMPACTS ON RENEWABLE DEVELOPMENT ECONOMICS AND CONTRACT CONSIDERATIONS

SEPTEMBER 26, 2023

I. Introduction

AES Clean Energy, LLC ("AES") appreciates all parties' comments on the original Petition[1] filed by the Alliance for Clean Energy New York ("ACE NY") on June 12, 2023. In the interest of providing thoughtful, helpful commentary to the New York Public Service Commission ("Commission"), AES respectfully offers a response to address the most pressing issues from *Reply Comments Of The Alliance For Clean Energy New York, Inc. Concerning Its Petition Addressing Post Covid-19 Impacts On Renewable Development Economics And Contract Considerations* ("ACE NY Reply")[2] filed on September 13, 2023.

In these reply comments, AES will address the following:

1. The "adjustment mechanism"[3] overstates market circumstances and is not the most effective way to meet the Climate Leadership and Community Protection Act ("CLCPA") requirements at a more affordable cost to New York ratepayers.
2. AES reiterates its opposition to the ACE NY Petition and recommends that the Commission deny the requested relief, and direct New York State Energy Research and Development Authority ("NYSERDA") to immediately commence a new solicitation process to allow for market-rate contracts to be awarded to viable projects.
3. The costs of implementing the adjustment mechanism are significantly more than it would cost for future NYSERDA solicitations to contract the same amount of renewable energy projects. The project maturity requirements in future solicitations would allow the state to contract viable projects, advanced in their development, with the ability to meet the deadlines of the CLCPA.[4]

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[1] 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. ("Petition") Filed June 12, 2023. https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={909B9788-0000-C53F-9145-808CE763D4A1}

[2] Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Reply Comments Of The Alliance For Clean Energy New York, Inc. Concerning Its Petition Addressing Post Covid-19 Impacts On Renewable Development Economics And Contract Considerations ("ACE NY Reply") Filed September 13, 2023. https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B07F8A8A-0000-C434-B659-9583929B9B95}

[3] Petition at p. 5.

[4] Case 15-E-0303, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, 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 ("AES Comments") Filed August 28, 2023.

A. Adjustment mechanism overstates market circumstances and is not the most effective way to meet the CLCPA requirements at a more affordable cost to New York ratepayers

In its Reply, ACE NY states that "no party provided any evidence refuting the nature or scope of the Post-COVID impacts."[5] However, NYSERDA confirmed that it was not reasonable for developers to assume that a "low interest rate environment would persist throughout the period in which their projects were to be financed."[6] As well, AES questioned if the amount of the price increase requested in the Petition accurately reflected the aforementioned impacts and the hedging strategy of Petitioners in light of such market conditions.[7] To further refute ACE NY's claim, NYSERDA states that:

> "overall, the price adjustment mechanisms proposed by the Petitioners, particularly Empire/Beacon and ACE NY, **appear to shift risks from developers to ratepayers in a manner that goes beyond, and in some cases does not appear tied to, the extraordinary market circumstances that underly the requests.**"[8]

AES does not support ACE NY's proposal to increase the compensation paid to the "Under Development"[9] Projects. The proposal is flawed because, as NYSERDA demonstrated above, it would require ratepayers to fund market impacts that are overstated in the Petition. ACE NY's focus on the degree of the effects of inflation, interest rates, and supply chain issues distracts from the main point – that the adjustment mechanism is not well-designed, nor is it the most effective way to meet the CLCPA requirements at a more affordable cost to ratepayers. The ACE NY Reply does not adequately answer these outstanding concerns.

AES disagrees with the presumption in the Petition and the ACE NY Reply that the Under Development projects are the only ones that can meet New York's climate goals and reliability needs.[10] As was demonstrated in AES' comments and will be reiterated below, a competitive solicitation is the best path to fulfill the state's climate and reliability needs.[11]

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[5] ACE NY Reply Comments Affidavit at p. 2.
[6] Case 15-E-0303, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, NYSERDA Comments On Petitions Requesting Price Adjustments To Existing Contracts. https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A0DF3D8A-0000-C13E-9194-B0B8AFA2A97A} ("NYSERDA Comments") Filed on August 28, 2023, at p. 10.
[7] AES Comments at pp. 15-16.
[8] NYSERDA Comments at p. 21.
[9] Awarded Projects that have not already been cancelled, are not operational or nearing operation, Petition at p. 4.
[10] AES Comments at p. 19.
[11] AES Comments at pp. 10-11.

B. Rebidding Projects in a Future NYSERDA Solicitation is the most efficient solution to meet the CLCPA requirements

AES recommends that projects which are not viable unless they are awarded increased compensation, should consent to cancel contracts[12] and rebid them in a future NYSERDA solicitation. The ACE NY Reply suggests that "… project development [has not] been unreasonably delayed by the developers."[13] AES readily acknowledges barriers to the project development process in New York,[14] such as timing between NYSERDA awards, the New York Independent System Operator ("NYISO") Class Year, and 94-c permitting.[15] The ACE NY Petition's stated methodology of first executing a NYSERDA REC contract then moving to the next steps of project development further exacerbates those delays. As mentioned in AES' comments, when projects are bid and awarded at early stages in their development, the bids do not yet have a complete picture of the costs and are likely to be inaccurate representations of the true project economics. This methodology has contributed to project delays as developers realize they cannot meet the unrealistic pricing they committed to in their bids.[16]

Regarding potential delays for rebidding Tier 1 projects, NYSERDA: "indicates a risk of an average project delay of 2.5 years if Tier 1 projects do not move forward under current pricing and re-bid into future solicitations, with projected delays ranging from roughly 1 to 4 years by project."[17] AES understands that NYSERDA plans to issue the next Tier 1 Renewable Energy Certificates ("REC") solicitation in late 2023 ("2023 NYSERDA solicitation") with awards issued in 2024. Based on publicly available project-specific analysis,[18] AES estimates that rebidding into the 2023 NYSERDA solicitation would not cause delays for approximately half of the Under Development projects because these projects are not sufficiently advanced in either permitting and/or the interconnection process.

The remaining half of the Under Development projects are farther along in their development and have completed permitting and interconnection development process steps. If these projects were to be rebid into

[12] RESRFP21-1 ATTACHMENT A. RES Standard Form Agreement. ("NYSERDA Standard Form Agreement"). https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pt000000UOmFyEAL, at pp. 31-32.
[13] ACE NY Reply at p. 6.
[14] ACE NY Reply at p. 11.
[15] AES Comments at p. 8
[16] AES Comments at p. 8.
[17] NYSERDA Comments at p. 24.
[18] Office of Renewable Energy Siting, Permit Applications, https://ores.ny.gov/permit-applications; Summary of Tier 1 and OREC Projects (RES and RPS Solicitations) https://data.ny.gov/Energy-Environment/Summary-of-Tier-1-and-OREC-Projects-RES-and-RPS-So/3jem-xu5s/data; New York Independent System Operator, Interconnection Queue, August 31, 2023, https://www.nyiso.com/documents/20142/1407078/NYISO-Interconnection-Queue.xlsx/b5d49f1f-b40f-4fd7-1408-987907db9205.

the 2023 NYSERDA solicitation, they may be delayed up to a year (depending on the timing of the NYSERDA award); however, this delay would not affect the 2030 CLCPA deadline.

Regarding interconnection, NYISO's Class Year 2023 ("CY23") presents a unique timing alignment opportunity for developers. Twenty of the Under Development projects are in CY23, and if they rebid into the 2023 NYSERDA solicitation, they should be notified of their NYSERDA award decision prior to the security posting decision deadline for CY23 in Q4 of 2024.[19] Ten of the Under Development projects have not yet joined a Class Year, and if they rebid into the 2023 NYSERDA solicitation, those projects would not be delayed, because the expected execution date of the interconnection agreement would be an estimated two or more years after the 2023 NYSERDA solicitation award.

To further support AES' proposed rebidding solution, and absent from the ACE NY Reply, is a consideration of currently uncontracted renewable energy in advanced stages of the interconnection queue. There are 17,919 GWh of advanced stage, uncontracted renewable energy available,[20] sufficient to backfill any contract attrition and ensure that the state meets its climate goals.

i. Transmission Upgrades

Of note, the ACE NY Reply has mischaracterized the criteria for Phase 2 transmission upgrade inclusion to be "primarily based" on NYSERDA awarded projects.[21] However, the Commission established a broader set of criteria including: "(1) projects with awards from prior NYSERDA auctions; (2) projects that are operating or under construction; (3) projects that are the subject of a complete application for siting approval; and (4) projects deemed likely to enter into operation."[22] The approved Phase 2 upgrades reflect the Commission's criteria. Only about 30% of the MW for the approved Phase 2 upgrades are associated with NYSERDA awarded projects.[23] A majority, 70%, of the Phase 2 upgrades will support existing

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[19] https://www.nyiso.com/documents/20142/39791086/06_CY-EDS%20Status%20Update_TPAS_September2023_clean.pdf/5e79f201-cbf8-45da-ec07-2fc4941b47ff

[20] AES Comments at p. 11.

[21] The citation related with this assertion does not refer to the criteria to define "near-term" Phase 2 needs, but instead is about a future scenario for study, the contract case, at the NYISO in its System & Resource Outlook 2022 https://www.nyiso.com/documents/20142/32663964/2021-2040_System_Resource_Outlook_Report_DRAFT_v15_ESPWG_Clean.pdf/99fb4cbf-ed93-f32e-9acf-ecb6a0cf4841 at p. 21.

[22] Case 20-E-0197 Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act. Order On Local Transmission And Distribution Planning Process And Phase 2 Project Proposals, Filed on September 9, 2021 at p. 36.

[23] Case 20-E-0197 Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Order Approving Phase 2 Areas of Concern

renewable energy and uncontracted renewable generation. The Phase 2 upgrades are expected to be completed in 2028-2030.[24] Thus, were the awarded projects to rebid in the NYSERDA 2023 solicitation (and delayed up to one year, as described above), neither the projects nor the transmission upgrades would not be impacted by the project rebid solution.

C. Adjustment mechanism positions projects with a strike price above 2022 RFP bids

The goal of NYSERDA's REC solicitations is, among other things, to provide clean energy at the least cost to ratepayers. As proposed, the adjustment mechanism would unfairly and unnecessarily inflate certain project contract prices *above* the current market price. In its Reply, ACE NY asserts that: "Fatal to AES' claims, NYSERDA confirmed that the median bid prices in these proposals were "significantly higher than in prior solicitations" and "establish where the market currently stands."[25] The issue at hand is not whether prices are increasing. Rather, it is that the proposed adjustment mechanism would likely yield prices *above* market as established by the bids submitted in the most recent 2022 solicitation. This produces unreasonably high costs for ratepayers because it would result in contract prices well above competitive market prices.

Absent from the ACE NY Reply is price considerations from federal funding opportunities. This includes, but is not limited to, the Inflation Reduction Act ("IRA") tax credits for energy communities and domestic content.[26] These federal incentives would place several projects in a more viable position.

i. Adjustment mechanism is not well-designed

The ACE NY Reply points out that NYSERDA contends that awarding a "well-designed" price adjustment would not "undermine the competitiveness of prior solicitations or harm non-awardees, nor would it be expected to provide a windfall to developers."[27] However, as noted by NYSERDA and AES, the adjustment mechanism is not well-designed; therefore, granting it undermines the competitiveness of prior solicitations. The adjustment mechanism did not consider individual project development progress or individual project returns in its blanket request and overstated the market conditions.[28] NYSERDA adds that the adjustment mechanism would "result in a significantly greater price adjustment than those that

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Transmission Upgrades, issued February 16, 2023. ("Phase 2 Upgrades") https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b0C1FE2AF-2922-4BF5-809C-5C93F4F73121%7d at p. 10 Table 1 (1,346 MW/4,218 MW generation).

[24] Phase 2 Upgrades, Table 2 at p. 12.

[25] ACE NY Comments at p. 13.

[26] https://arcgis.netl.doe.gov/portal/apps/experiencebuilder/experience/?id=a2ce47d4721a477a8701bd0e08495e1d

[27] NYSERDA Comments at p. 44.

[28] NYSERDA Comments at p. 21.

would result if the inflation adjustment formula in the 2022 Tier 1 Solicitation RESRFP22-1 (22T1) were applied."[29] A price adjustment based on overstated market impacts would result in greater compensation than a developer otherwise would receive from a narrowly-tailored adjustment, meaning that some developers would receive customer-funded windfall payments for the duration of their contract terms.

Though absent from the ACE NY Reply, NYSERDA points out several flaws in the adjustment mechanism: "the formulas proposed by ACE NY that appear to be less correlated to project costs and the market-wide inflationary pressures and may not reflect appropriate risk allocation to developers"[30] Specifically, NYSERDA names: the Module Expectations Factor, Electric Power & Specialty Transformer Manufacturing wind index, weighting 100% of inflation for ratepayers to pay, and passing along the interest rate increases on unfairly to ratepayers. NYSERDA astutely points out that the Petition assumes that 100% of awarded projects should be able to move forward: "the relief proposed by ACE NY appears designed to provide the economic basis to enable 100% of projects to move forward" without accounting for attrition,[31] thus requiring New York ratepayers to fund a flawed price increase to save all the Under Development projects. AES agrees with NYSERDA's assessment that the adjustment mechanism is not well-designed.

Regarding the treatment of the CPNY and ACE NY Petitions, AES agrees with the NYSERDA and Rise Light and Power [32] suggestion that the ACE NY Petition solution should be decided prior to, and separately from the CPNY / Tier 4 Petition, due to the interrelated nature of the generator payments.[33]

Giving a post-award adjustment does not guarantee the lowest cost for ratepayers for the reasons described above and in AES' initial comments. Only a competitive solicitation can ensure an above-market premium is avoided. Approving post-award adjustments to all the projects would be expensive, unnecessary, and anti-competitive.

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[29] NYSERDA Comments at p. 10.
[30] NYSERDA Comments at p. 21.
[31] NYSERDA Comments at p. 22.
[32] Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Supplemental Comments And Reply To Response Of Clean Path New York Llc To Motion To Compel Of Rise Light & Power Llc Regarding Clean Path New York Llc's Petition To Address Postcovid Impacts And Associated Considerations Concerning The Tier 1 Eligible Generation Component Of Its Clean Energy Standard Tier 4 Renewable Energy Certificate Contract, Filed September 19, 2023 at p. 4. https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E0AAAD8A-0000-C51E-825B-53E8010C032D}
[33] NYSERDA Comments at p. 48.

II. Conclusion

AES opposes the method and basis for the adjustment mechanism. The ACE NY Reply incorrectly assumes a shared objective of saving all Under Development projects requesting a contract price increase, when in fact, the most efficient solution would be to return non-viable project contracts and rebid in a future NYSERDA Solicitation. AES remains confident that New York can successfully meet the goals of the CLCPA without the adjustment mechanism, resulting in the most economical and viable projects at a lower cost to ratepayers. Accordingly, AES urges the Commission to reject the Petition.