

**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

**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**

AUGUST 28, 2023

I. Introduction

AES Clean Energy, LLC (“AES”) opposes the method and basis for the price increase in the *Petition of The Alliance For Clean Energy New York To Address Post COVID-19 Impacts On Renewable Development Economics And Contract Considerations*¹ (“Petition”) and encourages the New York Public Service Commission (“Commission”) to deny the request as presented. NYSERDA and the developers should consent to cancel contracts² to allow for viable projects with market rate contracts to be selected in future NYSERDA solicitations to meet the goals of the Climate Leadership and Community Protection Act (“CLCPA”) in a timely manner and at a lower cost to ratepayers.

In these comments, AES offers insight into the NYSERDA Tier 1 process and identifies various project development barriers that have led to project delays in New York, resulting in the operations of only eight³ of the 117 awarded projects or 3.1% of the contracted awarded projects⁴ since 2016.⁵ Understanding these barriers is crucial in assessing the shortcomings of the Petition’s request. Subsequently, AES presents compelling arguments to advocate that the Commission should deny the “adjustment mechanism”⁶ proposed in the Petition because it is detrimental to the goals of the CLCPA and against the interest of the ratepayers. The Petition conflates adverse market conditions with non-viable project bids, while ignoring favorable trends in market conditions. AES acknowledges that certain instances require contract re-negotiation. External factors are not always avoidable but requesting a blanket increase across several distinct projects without a realistic analysis of the external cost pressures, as will be explained in the comments, is not the correct method.

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 RESRFP21-1 ATTACHMENT A. RES Standard Form Agreement. (“NYSERDA Standard Form Agreement”) <https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pt000000UOmFyEAL> at p. 31-32.

³ 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](#). PSC Receives Update on Climate Act’s Investments & Successes, July 20, 2023, <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={20E17489-0000-C114-AD41-8089369DB6F3}> at p. 13 (“PSC CLCPA Update”).

⁴ New York state Comptroller, Renewable Electricity in New York state, August 2023. (“Comptroller”) <https://www.osc.state.ny.us/files/reports/pdf/renewable-electricity-in-nys.pdf> at p. 10.

⁵ <https://www.nyserda.ny.gov/About/Newsroom/2023-Announcements/2023-4-18-During-Earth-Week-Governor-Hochul-Announces-Completion-Of-Eight-New-Large-Scale-Renew>

⁶ Petition at p. 5.



Specifically, the Petition does the following:

- A. Relies on the demonstrably false premise that New York cannot meet the goals of the CLCPA without the adjustment mechanism.
- B. Imposes high cost on ratepayers.
- C. Misstates the impact of the projects in the Petition on recently approved transmission upgrades.
- D. Combines all projects into one cluster without considering individual, project-specific factors, resulting in a price increase for all projects that fails to guarantee timely project completion.
- E. Depends on flawed analysis of inflationary, post-COVID cost pressures.
- F. Undermines the competitive RFP process and market principles established in New York.

The best path forward for the state to meet the goals of the CLCPA, while limiting financial impact to ratepayers, is for the Commission to deny the Petition and direct NYSERDA to utilize the contract mechanisms to cancel⁷ contracts that are not viable as bid. These projects would be eligible to rebid in a future solicitation.

a. AES Introduction

AES is a leading renewable energy solution provider and one of the largest renewable energy owner-operators in the country. AES delivers innovative⁸ clean energy solutions tailored to meet the specific needs and objectives of our customers. We believe in being a good neighbor and are committed to supporting a responsible transition to clean energy that benefits both the environment and local communities. Across the country, AES owns and operates a portfolio of more than 5.1 GW of renewable energy assets, including more than 540 utility-scale and community solar, wind, energy storage, and hybrid projects across 24 states. AES has developed and owns and operates the largest solar project east of the Rockies, the 485 MW Spotsylvania Solar Energy Center.⁹ AES has been recognized for leading the industry globally in signed corporate Power Purchase Agreements (“PPA”) in 2021 and 2022,¹⁰ reflecting our leadership in co-creating impactful energy solutions with our partners. Specifically, AES has extensive expertise in offering 24/7 carbon-free energy solutions, helping our customers meet their clean energy objectives every hour of every

⁷ NYSERDA Standard Form Agreement at p. 31.

⁸ <https://www.prnewswire.com/news-releases/aes-named-to-fast-companys-2022-worlds-most-innovative-companies-list-301497399.html>

⁹ <https://www.aes.com/virginia>

¹⁰ <https://about.bnef.com/blog/corporate-clean-energy-buying-tops-30gw-mark-in-record-year/>



day.¹¹ AES has extensive experience negotiating PPAs across the United States. We have incorporated this experience and knowledge base into our comments.

b. AES: Climate Leader in New York

In New York, AES is a committed, solutions-oriented climate leader. AES has spent more than two decades building projects in New York as one of the state’s leading developers. AES’ development pipeline in New York includes more than 2.4 GW of clean energy projects including utility-scale solar, wind, community solar, and energy storage. AES owns and operates one of the largest renewable energy portfolios in New York with 62 projects representing more than 850 MW of energy resources including Valcour Wind, a portfolio of 612 MW of operating wind projects. We provide actionable, solutions-oriented improvements to reduce the barriers to build and operate renewable energy projects in New York through thoughtful commentary and outreach to the Commission, New York State Energy Research and Development Authority (“NYSERDA”), and the New York Independent System Operator (“NYISO”) on the most impactful renewable energy issues in New York today.

AES continues to offer a developer’s perspective with the objective of timely and cost-effective construction of renewable energy projects to help position New York to meet the goals of the CLCPA. In July 2022, AES provided specific recommendations¹² to NYSEDA’s Request for Information¹³ that resulted in increased project viability requirements that were included in the Tier 1 Request for Proposals (“RFP”) in 2023 (“RESRFP22-1”).¹⁴ RESRFP22-1 is expected to yield Tier 1 Renewable Energy Certificate (“REC”) contracts with projects that are more advanced in their pricing and are farther along in the development process. In RESRFP22-1, AES bid several solar, storage, and wind projects. Such efforts demonstrate AES’ dedication to the market as well as commitment to improving the conditions to build and operate renewable energy projects in New York, and a willingness to be a partner in meeting the goals of the CLCPA.

¹¹ <https://www.aes.com/case-story/how-google-using-data-centers-accelerate-global-adoption-clean-energy>

¹² Recommendations included emphasis on minimum threshold requirements, company industry record, project viability criteria (interconnection, permitting, energy deliverability) limit number of COD extensions, and non-viability determinations.

¹³ NYSEDA Large-Scale Renewables Capacity Accreditation Request for Information (LSSRRFI23-1)

<https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00P8z000001M2SxEAK>.

¹⁴ NYSEDA Request for Proposals RESRFP22-1, Update effective January 13, 2023, <https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00P8z000002LTLBEA4> (“RESRFP22-1”).



II. Project Delays in New York

In this section, AES provides the NYSEDA Tier 1 contracting background and development process barriers that contribute to project delays in New York, which are essential in understanding the flaws in the Petition.

a. Background on NYSEDA Tier 1 Solicitations

NYSEDA plays an invaluable and unique role in New York. AES appreciates the efforts and leadership NYSEDA has shown in advancing renewable energy projects. NYSEDA has made amendments to the REC program, such as increasing the duration of the contracts and switching from a fixed REC structure to an index REC.¹⁵ As well, NYSEDA is a credit-worthy off-taker, which gives developers and investors' confidence in the market. Developers in New York should be working within NYSEDA's demonstrated flexibility instead of asking for blanket price increases.

Though not the only cause of project delays in New York, issues with the Tier 1 awarded projects have resulted in the operations of only eight projects (292 MW),¹⁶ of the 117 projects (14+ GW), awarded since 2016,¹⁷ as shown in the chart below.

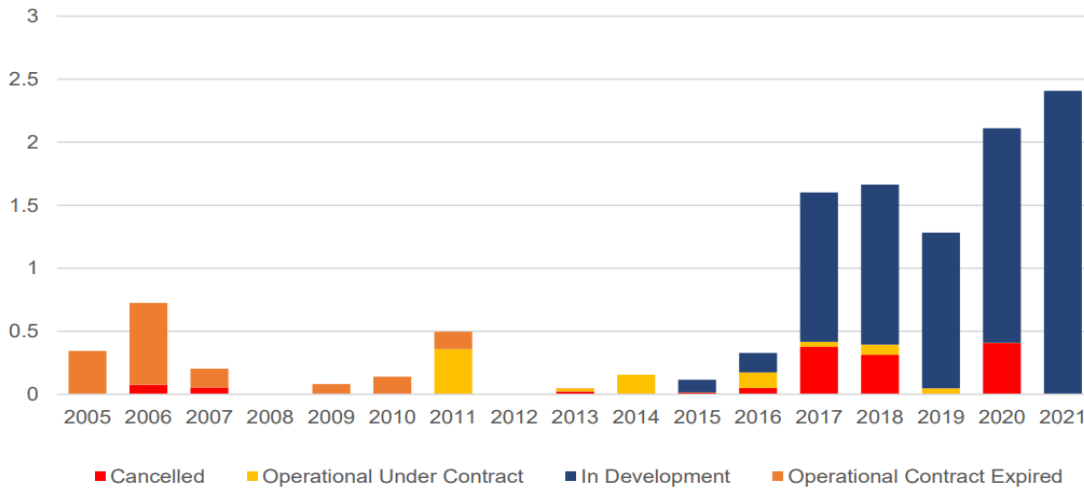
¹⁵ Case 15-E-0302- Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Modifying Tier 1 Renewable Procurements, issued January 16, 2020. <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1F9CA0EB-3968-41DB-BBE0-C251A3FE52DE}> at p. 20.

¹⁶ PSC CLCPA Update at p. 13.

¹⁷ <https://www.nyserda.ny.gov/About/Newsroom/2023-Announcements/2023-4-18-During-Earth-Week-Governor-Hochul-Announces-Completion-Of-Eight-New-Large-Scale-Renew>



Gigawatts of Projects Awarded REC Contracts by Status, 2005-2021



Source: New York State Energy Research and Development Authority

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In the NYSERDA solicitations, the bidder’s strike price accounts for 70% of the selection criteria for projects.¹⁹ Projects bid at various stages of development and viability, yet competed as if the strike price was an exact comparison. Based on publicly available contract price information,²⁰ and the Petition’s assertion that capital costs for solar and wind were “declining over the period when the REC Solicitations were issued, developers reasonably could have expected this downward trend in overnight capital costs to continue from the date of proposal submission to the date they placed major equipment orders and began project construction,”²¹ AES believes that projects were bid at strike prices lower than the cost to build in New York. Once a project has been de-risked and completed the other steps in the development process, such as securing an Office of Renewable Energy Siting (“ORES”) 94-c permit, interconnection agreement, site control, and contracted engineering, procurement, and construction (“EPC”), the strike price will be more accurate. The previous NYSERDA RFPs only required minimal de-risking of the project and did not have the same minimum threshold requirement reflective of the most recent NYSERDA RFP. When projects are bid in the early stages of their development, the strike price does not accurately reflect the true costs associated with developing and building the project.

Thus, NYSERDA awarded contracts to certain projects at price levels that would be unable to support completion. Though these projects are non-viable, the developers have been continuing to extend their

¹⁸ Comptroller at p. 9.

¹⁹ RESRFP22-1 at p. 21.

²⁰ NYSERDA Summary of Tier 1 and REC Projects, <https://data.ny.gov/Energy-Environment/Summary-of-Tier-1-and-OREC-Projects-RES-and-RPS-So/3jem-xu5s/data>

²¹ Petition at p. 17.



contracts and have not suffered any significant financial penalties because the Contract Security (“security”) amounts, as defined in the NYSERDA’s Renewable Energy Standard (“RES”) Standard Form Agreement,²² are relatively low. For comparison, a security for Arizona Public Service (“APS”) PPA is about four times greater²³ than the same size project security in a NYSERDA contract.²⁴ Indeed, the Commission should examine why projects that received contract awards five to seven years ago have not yet been completed. That should be more than enough time to complete the siting, interconnection, financing, and construction processes.

According to the Petition, there has been a 12% attrition rate, or 1.1 GW of solar and wind projects.²⁵ The Commission expected an attrition rate of 20%.²⁶ AES believes that the lower-than-expected attrition rate coupled with lack of progress on many projects demonstrates that there is an insignificant financial deterrent for contracts to be removed, or for developers to cancel their contracts if the projects are not viable.

In AES’ experience with NYSERDA’s Progress Report requirements in its contracts,²⁷ we have noticed an improvement in the quality of the information requested. However, it is not clear whether or how NYSERDA acts upon the requested information. This appears to leave a gap in assuring projects are moving forward and able to meet obligations in the contracts.

The security is not substantial enough to motivate developers to build the project or deter them from holding onto their awards. Less-than-clear Progress Reporting actions miss an opportunity to intervene or assess how a project is progressing in its development. These two factors, underpinned by inaccurate pricing, have led to projects that are not viable.

²² NYSERDA Standard Form Agreement at p. 32.

²³ Arizona Public Service Company, 2023 All-Source Request for Proposals. June 30, 2023, https://www.aps.com/-/media/APS/APSCOM-PDFs/About/Our-Company/Doing-business-with-us/Resource-Planning-and-Management/2023_RFP.ashx?la=en&hash=DD4D1867F184DCB0DA0AFF9393211EA4 at p. 15.

²⁴ <https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pt000000UOmFyEAL> at p. 33.

²⁵ Petition at p. 20.

²⁶ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Energy Program and Clean Energy Standard. Order Adopting Modifications to the Clean Energy Standard, issued October 15, 2020.

<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={EAAF1A1E-2A05-49A7-A4D1-C5755E5BE536}> at p. 24.



b. *Development process project delays*

In addition to the issues with NYSERDA contracting, as outlined in the previous section, AES has found several barriers and challenges to overcome in building renewable energy projects in New York, including ORES 94-c permitting,²⁸ long interconnection queue time,²⁹ and shortage of EPC firms able to build at scale. The timing and coordination between those steps can be complicated: for instance, deciding if the cost allocation from the NYISO Class Year will be accepted for interconnection before a project is awarded a NYSERDA contract.

The Petition notes that permitting delays, long interconnection times, financing, and equipment procurement are all barriers to building projects in New York.³⁰ However, the Petition incorrectly asserts that the REC contract should be executed before beginning any of these project development efforts:³¹ “[O]nce projects secure REC awards, renewable energy developers must also successfully navigate two additional approval processes – project permitting and project interconnection. Both tasks can significantly increase the time and the cost required to complete a project.”³² AES rejects this approach to NYSERDA REC contract timing with permitting and interconnection. As explained in the previous section, when projects can bid and be awarded contracts without a clear picture of the costs of the development process, the bids are likely to be inaccurate. This has contributed to project delays as developers realize they cannot meet the unrealistic pricing they committed to in their contracts.

Together, the inaccurate pricing bid into previous NYSERDA solicitations and the regulatory barriers mentioned above, created a perfect storm for project delays in New York. The solution to these delays is not, as suggested in the Petition, a blanket price increase for these projects. Instead, a more suitable remedy would be to have these projects participate in future NYSERDA solicitations. These future solicitations would be better equipped to assess the viability of previously awarded projects alongside new projects, thereby reducing delays, and allowing new projects to complement and enhance the existing ones.

²⁸ <https://www.osc.state.ny.us/files/reports/pdf/renewable-electricity-in-nys.pdf> at p. 10.

²⁹ <https://www.politico.com/news/2023/03/01/new-york-climate-goals-renewable-projects-00083247>

³⁰ Petition at p. 16.

³¹ Petition at p. 16.

³² Affidavit at p. 8.



III. Petition – Little Reward, High Risk for the CLCPA

AES is asking the Commission to deny the Petition and provides specific arguments to support the fact that the Petition does not support the goals of the CLCPA and, in fact, will increase costs that will be passed to the ratepayers.

a. *New York can meet the goals of the CLCPA*

New York can meet the goals of the CLCPA without exorbitant costs to ratepayers and without acquiescing to the adjustment mechanism request in the Petition. The Petition asserts that without applying the adjustment mechanism to the specific awarded contracts,³³ New York will not meet its climate goals. This is a misleading and inaccurate assertion.

The Petition, by alluding to the threat that not authorizing the adjustment mechanism will keep New York from meeting the goals of the CLCPA, inadvertently stumbles on the solution to the project delays: to cancel those contracts that are not viable so that they may be rebid in an upcoming NYSERDA Tier 1 solicitation.³⁴ Canceling these contracts will allow viable, cost effective, competitive projects to bid and be awarded contracts that will position more renewables to come online in time to meet the 70 x 30 goal.

To meet the 70 x 30 goal of the CLCPA, New York needs 106,174 GWh.³⁵ New York’s existing renewable generation is 40,572 GWh.³⁶ The state has contracted and awarded 62,000 GWh as of January 2023, 66% of the state’s load in 2030.³⁷ Presently, NYSERDA is authorized to procure 4,500 GWh of generation from 2021-2026.³⁸ In the latest NYSERDA solicitation, RESRFP22-1, 8,550 GWh were bid,³⁹ well over the target for procurement of 4,500 GWh. According to the latest NYISO queue,⁴⁰ in Class Year 2023, there

³³ Petition at p. 1.

³⁴ Petition at p. 7.

³⁵ NYSERDA, *Toward a Clean Energy Future: A Strategic Outlook*. <https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/About/Strategic-Plan/strategic-outlook.pdf> at p. 27.

³⁶ *Id.*

³⁷ PSC Update at p. 13.

³⁸ <https://pv-magazine-usa.com/2020/06/19/new-york-regulators-nyserda-release-white-paper-on-how-to-better-achieve-70-renewables-by-2030/>

³⁹ 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> (“NYSERDA RPS Data”)

⁴⁰ New York Independent System Operator, *Interconnection Queue*, August 1, 2023.

<https://www.nyiso.com/documents/20142/1407078/NYISO-Interconnection-Queue.xlsx/b5d49f1f-b40f-4fd7-1408-987907db9205?t=1689258135136> (“NYISO Queue”)



are 3,869 GWh⁴¹ of non-contracted renewable energy that did not bid into RESRFP22-1. In addition, according to the latest iteration of the NYISO queue,⁴² an additional 10,000 GWh of non-contracted renewable energy projects are in System Reliability Impact (“SRIS”), or advanced stage in the interconnection queue and are reasonably achievable.

Large-scale projects (20 MW+), 40 in total, would need to have filed a 94-c notice of application submission by March 2023 to achieve a Commercial Operation Date (“COD”) prior to 2026. 24 of the 40⁴³ NYSERDA awarded projects⁴⁴ have not met that milestone and will not be likely to reach a pre-2026 COD due to the regulatory steps needed to receive a 94-c permit.

For the purposes of illustration, in Table 1, AES has created a scenario below to demonstrate the worst-case scenario in meeting the goals of the CLCPA. AES assumed that projects that are not ready-to-build before 2026 would have enough time to rebid with pricing that reflects the true costs to build their projects in a future NYSERDA solicitation. For this scenario, it is assumed that awarded projects that do not have a viable price⁴⁵ and are “ready-to-build” (advanced in permitting and interconnection) before 2026 (totaling 3,291 GWh), could be canceled. In addition, small projects under 20 MW (totaling 1,760 GWh) could be canceled in this scenario.⁴⁶ Therefore, if these projects are removed from the current “contracted and awarded” category, New York can still comfortably meet its 70 by 30 goal, with over 9,000 GWh more than the target.

⁴¹ According to a cross reference of Class Year 2023 members (NYISO Queue) and projects submitting Step 2 bids in RESRFP22-1 (NYSERDA RPS Data).

⁴² New York Independent System Operator, Interconnection Queue, August 1, 2023.

<https://www.nyiso.com/documents/20142/1407078/NYISO-Interconnection-Queue.xlsx/b5d49f1f-b40f-4fd7-1408-987907db9205?t=1689258135136>

⁴³ 82 total awarded projects include 40 projects over 20 MW and 42 small projects under 20 MW.

⁴⁴ Office of Renewable Energy Siting, Permit Applications, <https://ores.ny.gov/permit-applications>

⁴⁵ Determined by AES based on publicly available contract pricing information and AES market analysis for illustrative purposes.

⁴⁶ Permit status for projects under 25 MW is less certain and predictable. For purposes of this analysis it is assumed these permitting for these projects would support pre 2026 CODs. This is a conservative assessment, and many small projects have requirements well above competitive market rates and will remain non-viable under any reasonable adjustment mechanism and would be unsuccessful in any competitive rebid – they are simply uncompetitive, unsavable and destined for cancellation. The generation for these 21 projects is 1,760 GWh/yr.



Table 1- Renewable Energy Backfill and the CLCPA Goal

Renewable energy requirements to meet 2030 CLCPA goal	106,174 GWh
Contracted, awarded and existing renewable generation	102,572 GWh
Worst case renewable energy generation lost due to canceled contracts	5,061 GWh
<u>New</u> contracted, awarded, and existing total	97,511 GWh
Total renewable energy needed to meet 2030 goals (106,174-97,511)	8,663 GWh
Renewable Energy backfill to meet 2030 goals	
Non-NYSERDA Contracted renewable generation in CY23	3,869 GWh
Renewables bid into RESRFP22-1 over 4,500 GWh target	4,050 GWh
Advanced SRIS projects	10,000 GWh
Total non-contracted renewable energy available to backfill	17,919 GWh
Surplus, over target renewable energy (17,919-8,663)	9,256 GWh

The adjustment mechanism is not necessary to avoid a CLCPA goal shortfall. New York is on track to exceed the goals. Tier 1 alone is projected to add 13,500 GWh of renewables to the “awarded and contracted” category from 2024-2026.

Per the Petition’s included analysis in the “Affidavit,” some of the projects requesting the price increase could build their projects without the adjustment mechanism.⁴⁷ AES estimates that based on publicly available data from previously awarded NYSERDA contracts,⁴⁸ and given the Inflation Reduction Act (“IRA”) tax credits for energy communities and domestic content,⁴⁹ 12 of the 40 large projects, totaling 5,513 GWh, can move forward without the adjustment mechanism and build pre-2026.

Thus, the Petition is inaccurate in its assertion that without these specific projects, the goals of the CLCPA are at risk. In fact, New York can still meet the 70 x 30 goals of the CLCPA with the projects waiting in the interconnection queue, “ready-to-build”. AES encourages the Commission to discuss with NYSERDA

⁴⁷ 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. (“Affidavit”) Filed June 12, 2023. <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={909B9788-0000-C53F-9145-808CE763D4A1}> at p. 21.

⁴⁸ NYSERDA RPS Data.

⁴⁹ <https://arcgis.netl.doe.gov/portal/apps/experiencebuilder/experience/?id=a2ce47d4721a477a8701bd0e08495e1d>



and the NYISO how to achieve 70 x 30 with a clear picture of the amount of non-viable projects previously awarded and the available renewable projects that can backfill attrition.

b. High cost to ratepayer

Based on AES estimates, the total costs required to support the adjustment mechanism are understated in the Petition by several billion dollars.⁵⁰ The adjustment mechanism would not be a cost-effective way to ensure renewable energy projects are built in New York. AES argues that the relevant metric for assessing impact to rate payers should be to compare the prices for projects that were to receive the adjustment mechanism against the prices bid into the 2023 NYSERDA RFP. The market rate in 2023 is much lower than the prices achieved by granting the adjustment mechanism. The Petition does not acknowledge that this is a significantly higher cost to ratepayers. If the adjustment mechanism is granted, ratepayers would suffer in many ways. Not only would individual projects receive artificially high and uncompetitive pricing, but a blanket increase would also provide an unjust adjustment to multiple projects, all at ratepayer expense.⁵¹

The adjustment mechanism does not provide certainty that these projects would be built even after receiving an adjustment nor does it confirm when they would be completed. The Petitioners have failed to guarantee the adjustment will result in project construction. The Petition does not propose oversight of their use of the adjustment mechanism, for example, increased Progress Reporting to NYSERDA, that should be required of such a large request.

The Petition also does not address the passage of the IRA, specifically domestic content and energy community Investment Tax Credit (“ITC”) adders, both of which have an approximately 20-40% positive impact on required revenue.⁵²

Also, the Petition incorrectly estimates that without granting the request of the adjustment mechanism there would be additional delays in building the projects as well as incremental energy payments of \$1 billion and \$960 million increase in capacity payments.⁵³ Over half of the large projects are not able to meet a pre-

⁵⁰ Affidavit at p. 31.

⁵¹ Based on confidential bid price information in 2023 NYSERDA RFP.

⁵² <https://www.energy.gov/eere/solar/federal-solar-tax-credits-businesses>

⁵³ Petition at p. 6.

2026 COD.⁵⁴ The other half of projects have ample time to rebid their projects. Since New York has advanced stage renewable generation to backfill attrition, as demonstrated in the previous section, energy and capacity payment increases will be \$0 because there are enough renewables to backfill to meet the needs of the market and reliability of the grid.

AES recommends that the Commission resist allocating additional funding to projects that were bid with non-viable pricing, too early in their development, as outlined above. The proposed adjustment mechanism would be more costly to ratepayers than having projects rebid and compete with different projects in future RFPs.

c. Transmission upgrades not at risk

In February 2023, the Commission approved substantial transmission upgrades, Phase 2 Area of Concern (“Phase 2”) totaling over \$4.4 billion,⁵⁵ bringing much needed transmission capacity to renewable energy pockets⁵⁶ in New York. Yet, the Petition incorrectly argues that the upgrades could be “no longer be needed as designed, much less cost effective or efficient.”⁵⁷

The volume of uncontracted “advanced development” generation exceeds the headroom created by the Phase 2 transmission upgrades.⁵⁸ Thus, the upgrades will be fully utilized, even if these specific projects requesting the upgrades were to be canceled or rebid. Additionally, 98% of the Phase 2 upgrades are focused on the areas of concern, Northern NY (X2/X3) and the Southern Tier (Z1).⁵⁹ In these areas, 86% of the nameplate capacity of “existing and expected” generation is already operational or not yet contracted. Thus, only 14% of the transmission upgrades associated with Northern NY and the Southern Tier are associated

⁵⁴ Based on 94-c timeline needs of 18-24 months, projects that have not yet submitted as of the date of ACE NY Petition filing, will not be able to build before 2025

⁵⁵ 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 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>

⁵⁶ Case 20-E-0197 PSC Approves Upstate Transmission Projects to Eliminate Bottlenecks Constraining Delivery of Clean, Renewable Energy. February 16, 2023.



<https://dps.ny.gov/system/files/documents/2023/02/pr23015.pdf#:~:text=In%20its%20decision%2C%20the%20Commission%20approved%20the%20requests,the%20southwest%2C%20and%20northern%20regions%20of%20the%20state.>

⁵⁷ Petition at p. 36.

⁵⁸ Phase 2 at p. 11.

⁵⁹ Phase 2 at p. 10.

with awarded projects.⁶⁰ In addition, the Phase 2 upgrades will not be completed in full until 2028-2030,⁶¹ therefore the transmission capacity would not be underutilized, considering the projects rebidding in future solicitations or other projects backfilling attrition.

Transmission upgrades are vital to meet the goals of the CLCPA; however, the projects in the Petition are not the only projects that would benefit from these upgrades. The increased capacity would prevent curtailment and constraints for other renewable energy projects in the areas of concern. The Phase 2 upgrades serve to increase the local system export capacity to the bulk power system. For example, a majority of the upgrades in the Northern NY area of concern will increase the 115 kV backbone capacity along an entire corridor, 140 miles total.⁶² Currently un-contracted renewables could make efficient and complete use of the additional headroom created. The additional headroom associated with the upgrades does not need to be solely associated with these specific projects, thus the transmission upgrades are not dependent on the specific projects in the Petition.

d. Blanket increase is not project specific and does not guarantee projects will be built in a timely manner.

As described in both the Petition and in AES' experience, certain regulatory processes that delay building renewable energy projects in New York cannot necessarily be expedited with a price increase. There is not a guarantee that by securing more funding from the state, these projects will be able to overcome the other project delays as mentioned above, such as permitting, EPC, and long interconnection queues. Further, the projects requesting the adjustment are at different stages in their development. Each project is unique in its economics, location, resource type, Levelized Cost of Electricity ("LCOE"),⁶³ interconnection specifics, utility zone, and federal tax incentives. Differentiating among projects was rejected as a strategy in the Affidavit: "While we acknowledge a project-by-project adjustment would potentially produce the most exact realignment, it will be far more administratively intensive and would require a substantial number of

⁶⁰ Phase 2 Table 1 at p. 10.

⁶¹ Phase 2 Table 2 at p. 12.

⁶² Phase 2 at p. 16.

⁶³ NREL Simple Levelized Cost of Energy Calculation, [https://www.nrel.gov/analysis/tech-lcoe-documentation.html#:~:text=Levelized%20Cost%20of%20Energy%20\(LCOE%2C%20also%20called%20Levelized%20Energy%20Cost,electricity\)%20for%20a%20particular%20system.](https://www.nrel.gov/analysis/tech-lcoe-documentation.html#:~:text=Levelized%20Cost%20of%20Energy%20(LCOE%2C%20also%20called%20Levelized%20Energy%20Cost,electricity)%20for%20a%20particular%20system.)

judgment calls... While we acknowledge that a uniform application may be less precise in some cases, this approach will allow NYSERDA to simply and transparently calculate the Adjustment mechanism.”⁶⁴

Despite the high cost of the price increase requested in the Petition, the Petitioners do not consider the maturity levels of each project. If the Commission were to assess the viability of each project and its potential need for increased compensation, the Petition does not provide sufficient data to support this assessment. Nor does the Petition make clear how a blanket increase is more transparent than assessing individual project maturity. There is a direct cost to the ratepayers for the projects that require increases that situate the prices over what would be the results of a competitive solicitation.

The increased compensation requested in the Petition, if granted, might put projects and developers in a better position financially but it would do nothing to mitigate the aforementioned hurdles to project development in New York. More importantly, the CODs of these projects are not guaranteed simply with the adjustment mechanism. AES advises against setting a precedent that the state will provide additional funds to renewable projects under development without imposing reasonable de-risking or other requirements on the developers.

e. Flawed analysis of inflationary, post-COVID cost pressures

The adjustment mechanism request of a 43-73% price increase⁶⁵ does not reflect inflationary or COVID-related pressures. According to the U.S. Bureau of Labor Statistics, Producer Price Index (“PPI”)⁶⁶ data, inflation increased up to 11.7% over the period from July 2022- May 2023.⁶⁷ The Petition did not provide clarity as to how it arrived at 43-73% price increases.

The reference to PPI growth in the Affidavit is not reflective of publicly available sources and is not clear how the quarterly “PPI total growth” was calculated.⁶⁸ Additionally, projects awarded in 2017 and 2018 should have been far enough in their development that 2021 inflationary pressure would have had limited

⁶⁴ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Affidavit of Mark Repsher and Ashish Chaudhari in Support of Alliance for Clean Energy New York Inc.’s Petition to Address Post-COVID Impacts on Renewable Development Economics and Contract Considerations (“Affidavit”) <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={909B9788-0000-C53F-9145-808CE763D4A1}> at p. 24.

⁶⁵ Affidavit at p 33, Table 17.

⁶⁶ <https://www.bls.gov/ppi/>

⁶⁷ <https://www.bls.gov/opub/ted/2023/producer-prices-for-services-rose-2-3-percent-for-the-year-ended-june-2023.htm>

⁶⁸ Affidavit at p. 16, Table 7.



impact.⁶⁹ The projects that were selected in the 2021 RFP that accepted awards in early 2022 that are citing “unforeseen inflation” should not be claiming the same lack of knowledge as the projects bid in years prior. Those developers should already have been aware of the rising cost of equipment and capital at the time of bid acceptance. It should not be the responsibility of the ratepayer and the state to diminish all risk for those developers, nor should the state reward imprudent development practices.

The Petition sites that demand for solar and wind projects compounded the increases in costs associated with renewable energy projects, and has increased costs faster than the rate of inflation and at a timing such that developers were not aware of the inflationary pressures when bidding their projects for the 2021 REC Solicitation.⁷⁰ AES believes that developers should be considering certain risks into their financial modeling, and that requesting a 71% increase for 2020 solar projects and 43% increase for 2021 solar projects⁷¹ is not representative of the true costs to build.

AES disagrees with the Petition’s claim that it was reasonable for developers to assume that capital costs for solar and wind would continue to decline over time. The Petition states that, having observed that costs were “declining over the period when the REC Solicitations were issued, developers reasonably could have expected this downward trend in overnight capital costs to continue from the date of proposal submission to the date they placed major equipment orders and began project construction.”⁷² Similarly, the Petition asserts that since inflation levels and interest rates were low during the 2019 and 2020 NYSERDA RFP deadlines,⁷³ alternative scenarios were not modeled into their pricing. However, prudent developers should understand that when creating financial modeling for renewable energy projects, current trends may not continue. Petitioners should not have assumed, or left unhedged, risk for projects that were only economic if costs decreased over time. The risks and interest rate increases should be considered part of a developer’s hedging strategy and modeled into the pricing structure.

Confusingly, the Affidavit states that, “with industry standard construction time frames of roughly 18 months to two years, it is further notable that equipment for these projects was procured and the construction contracts were executed before the economic headwinds addressed herein took root.”⁷⁴ AES believes this

⁶⁹ U.S. Bureau of Labor Statistics, PPI Commodity Data 1-month Percent Change.
https://data.bls.gov/timeseries/WPU00000000?output_view=pct_1mth

⁷⁰ Affidavit at p. 19.

⁷¹ Affidavit at p. 33, Table 17.

⁷² Affidavit at p. 9.

⁷³ Affidavit at p. 12.

⁷⁴ Affidavit at p. 8.



indicates that certain projects should have been able to secure contracts for EPC before the inflationary and other mentioned cost pressures began and should not be requesting price increases.

More recent data suggests that inflation is returning to lower levels. In May 2023, the PPI indicated that there was -0.4% deflation and in June 2023 the annual PPI rose only 0.1%, representing the smallest increase since August 2020.⁷⁵ With the rate of inflation slowing, developers should be able to reflect in their pricing that the cost to build is decreasing from the time of peak inflation. For example, equipment procurement contracts should not reflect peak inflation of June 2022,⁷⁶ but rather the current market. If these projects are required to rebid in a future NYSERDA solicitation, they could benefit from the stability of the current market and bid strike prices closer to the actual cost to build in New York instead of relying on outdated trends. Also, were these projects to rebid under a future solicitation, they would benefit from the inflation adjustment mechanism in the most recent NYSERDA RFP, alleviating many of the concerns put forth in the Petition.

AES acknowledges inflationary pressures have increased costs over the period 2016-2023 for building renewable energy projects in New York, but it does not agree that inflation, interest rate, cost of capital, and supply chain issues should constitute a 43-73% price increase across all projects. Further, average PPA prices have gone up by 6.6% during the first quarter of 2023 with solar increasing by 8.5% and wind by 4.9%,⁷⁷ not nearly as high as the increase request in the Petition. AES understands that contract negotiations can be necessary; however, AES does not agree that distorting the market conditions and requesting a uniform increase is in the best interest of the state.

f. Undermines competitive RFP process and market principles established in New York

Since the 1990s, the Commission has clearly established its support of competitive principles in the generation of electricity.⁷⁸ AES and the Commission share the same view: the public and ratepayers are best served by a competitive generation sector, and the risks should be taken by the developers and their

⁷⁵ <https://www.forbes.com/advisor/investing/producer-price-index-ppi/#:~:text=The%20monthly%20PPI%20can%20be,increased%20costs%20to%20their%20buyers.>

⁷⁶ U.S. Bureau of Labor Statistics, PPI Commodity Data, <https://data.bls.gov/pdq/SurveyOutputServlet> June 2022 inflation was 280.251.

⁷⁷ <https://www.utilitydive.com/news/renewable-solar-wind-power-prices-rising-ira-ppa-demand/647892/>



⁷⁸ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan, issued February 26, 2015.

financiers. Allowing this adjustment mechanism is anti-competitive and counter to the principles that the Commission has rightfully established. AES argues that healthy competition among generation owners is best for New York ratepayers and best to encourage projects to be built. If companies can seek price adjustments and absolve themselves of development and financial risk, they do not have incentive to build projects efficiently.

AES believes granting this price increase could set a negative precedent that encourages anti-competitive market bidding behavior in a competitive solicitation. Since the contracts were awarded based 70% on price, an adjustment would materially change the price and the award itself. Not all bidders in previous NYSERDA solicitations are able to alter their strike prices to review how the externalities would have impacted all bids. The awardees are requesting to re-open awarded contracts, which is neither cost effective nor competitive. Instead of making special concessions for these projects, the developers should be required to either move forward under the existing contracts or cancel them and rebid in a NYSERDA solicitation. Their new bids can then be evaluated under the updated project viability criteria that includes the inflation strike price adjustment.

Such a price adjustment precedent would also create uncertainty that could discourage developers from undertaking the challenge of building renewable energy projects in New York. That uncertainty could also impact project funding as well since the costs for EPC have increased since firms are less willing to work in New York.

Inflation, or other externalities, are inevitable in any market; however, the adjustment mechanism request is not reasonable and does not paint an accurate picture of the progress of the projects requesting the adjustment. Granting the Petition's request encourages opportunistic behavior and removes significant risk from developers. AES is committed to achieving the goals of the CLCPA and encourages the Commission to consider that success is still achievable without granting the adjustment mechanism request in the Petition.

IV. Contract Return Solution

AES recommends that projects which are not viable unless they are awarded increased compensation cancel their NYSERDA contracts and rebid in a future solicitation. The Petition asserts that if several projects are forced to cancel their contracts due an inability to meet the required milestone steps and were to rebid in

future solicitations, their strike prices would be higher to reflect increased project costs.^{79 80} While AES acknowledges that prices could increase, AES does not believe that prices will increase by the requested 43-73%. Most notably, although the bids and pricing associated with recent NYSERDA awards are not public yet, AES believes that if the adjustment mechanism were granted, several projects would receive adjusted prices well above the price bid by similar projects in the most recent NYSERDA RFP, thus costing ratepayers above-market rates.⁸¹

The Affidavit admits that “that there are projects within this subset that could still be cancelled, or conversely, could be built even if no adjustment is awarded,”⁸² demonstrating that even the Petitioners understand that the blanket increase is not needed or required for more mature projects to build.

Similarly, the Petition notes, as though it were negative, that were projects to rebid or be canceled the projects that would replace them would be different in “size, type or location of the projects offered in the future.”⁸³ The Petition falsely claims this would be a deterrent to achieving the goals of the CLCPA – AES disagrees. Given the number of projects ready to step in to fill these gaps, losing non-viable projects would ultimately benefit the state and ratepayers. Further, as noted above, NYSERDA and the Commission assumed that some awarded projects would be canceled, and the actual attrition rate has been substantially lower than the attrition rate that the Commission anticipated.

In other states, there is precedent for developers cancelling their contracts and rebidding, even in states with lofty clean energy goals. In Massachusetts, the Department of Public Utilities recently rejected the appeals from project developers that asserted inflation and supply chain pressures made offshore wind projects no longer economically viable.⁸⁴ The developers of an offshore wind project decided to terminate the contract and rebid the project in a future solicitation, stating that it was the most cost-effective and quickest path forward.⁸⁵ In Rhode Island, the state’s largest utility, Rhode Island Energy, did not move forward with a 884 MW offshore wind project because the high costs did not outweigh the benefits.⁸⁶

⁷⁹ Petition at p. 5.

⁸⁰ Affidavit at p. 30.

⁸¹ Based on confidential pricing information

⁸² Affidavit at p. 21.

⁸³ Petition at p. 28.

⁸⁴ <https://maritime-executive.com/article/massachusetts-regulators-reject-appeals-approving-ppas-for-wind-farms>

⁸⁵ <https://www.utilitydive.com/news/avangrid-orsted-eversource-ppa-offshore-wind-development/688470/>

⁸⁶ <https://www.windpowermonthly.com/article/1830620/rhode-island-utility-rejects-revolution-wind-2-ppa-cost-grounds#:~:text=Rhode%20Island%20utility%20rejects%20Revolution%20Wind%20%20PPA%20on%20cost%20grounds,-19%20July%202023&text=Joint%20venture%20partners%20C3%98rsted%20and,were%20ultimately%20deemed%20too%20expensive%22.>



V. Conclusion

The goals of the CLCPA are achievable without granting the adjustment mechanism. The costs of the requested contract price increases are significantly more than it would cost for future NYSERDA solicitations to contract the same amount of renewable energy projects.

The Petition inaccurately frames the recently approved transmission upgrades as dependent on these specific projects, when in truth, that upgraded capacity could benefit several renewable energy pockets for renewable energy development in New York. In addition, the Petition chose not to assess project-specific progress as part of its request for price increases, and instead proposed a costly solution that does not guarantee that the projects can meet their required CODs. The high level of the requested price increase does not reflect inflationary or COVID-related pressures. Further, allowing the adjustment mechanism would be anti-competitive. AES believes that allowing viable projects to rebid in future NYSERDA solicitations would be a cost-effective solution that would encourage competition between generators and maintain the integrity of the NYSERDA solicitation.

AES opposes the Petition and recommends that the Commission deny the requested relief and direct NYSERDA to cancel contracts that do not have viable projects to allow for market-rate contracts to be awarded to viable projects. In a new solicitation, NYSERDA could apply more recently adopted mechanisms to encourage auction integrity, including its Inflation Risk Adjusted Bid Proposal,⁸⁷ and Non-price Evaluation & Minimum Threshold Requirements.⁸⁸ These and other mechanisms could be applied to any projects that bid, increasing the likelihood that the state would be contracting mature, viable projects, and aligning with the goals of the CLCPA.

⁸⁷ RESRFP22-1 at p. 26.

⁸⁸ *Id.* at pp. 33-48.