

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

Case 15-E-0302

**RESPONSE TO
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

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INTRODUCTION

The New York State Department of State’s Utility Intervention Unit (“UIU”) respectfully submits the following in response to the notice¹ seeking comments to the Alliance for Clean Energy New York, Inc. (“ACE-NY”) petition.² UIU is an office within the New York State Department of State’s Division of Consumer Protection and is statutorily authorized to “represent the interests of consumers of the state before federal, state and local administrative and regulatory agencies engaged in the regulation of energy services.”³ The Division of Consumer Protection also has a broad statutory obligation to protect consumers from economic harm.

ACE-NY is seeking contract modifications to the Clean Energy Standard (“CES”) Tier 1 Renewable Energy Certificate (“REC”) price for projects competitively selected in New York State Energy Research and Development Authority (“NYSERDA”) 2016-2021 solicitations⁴ that are under development yet not nearing operation (“Under Development Projects”). For markets and competition to function efficiently, contracts and obligations should be honored. Altering contracts after terms are defined can diminish the competitive process that potentially disadvantages those bidders not selected in a respective solicitation and consumers who are paying for the project. The unsuccessful bidders may have included a risk premium that could be less than the REC price adjustment ACE-NY is seeking in its petition. UIU offers the following suggestions in response to the ACE-NY petition in an effort to preserve the integrity of the competitive process yet attempt to make progress towards the goal of 70% renewable electricity generation by 2030.

BACKGROUND

The ACE-NY petition raises the following concerns: 1) only a tiny subset of awarded projects has completed the entire solicitation cycle and reached operational status (“Operational Projects”) and 2) procurement of generating capacity and completion of projects are far behind the

¹ Notice of proposed rule, NYS Register, I.D. No. PSC-26-23-00002-P, June 28, 2023.

² 15-E-0302 Petition of the Alliance for Clean Energy New York to Address Post Covid-19 Impacts on Renewable Development Economics and Contract Considerations (Petition), June 7, 2023.

³ N.Y. Exec. L. § 94-a.

⁴ NYSEDA solicitations 2016 through 2021 are titled RFP 3257, RESRFP17-1, RESRFP18-1, RESRFP19-1, RESRFP20-1, and RESRFP21-1.

2026 Public Service Commission (“PSC” or “Commission”) deadline. ACE-NY attributes the slow development of Under Development Projects to increasing material and financing costs compounded by an increased demand for renewable generating resources and associated labor demand. On behalf of ACE-NY, PA Consulting “analyzed price and financial input pressure on the portfolio of Under Developed Projects”⁵ to assess need and to develop the proposed adjustment mechanism. The ACE-NY petition seeks a one-time adjustment mechanism for solar and wind projects claiming it would restore “viability to support project completion, while also ensuring efficiency, transparency, and simplicity in their application.”⁶ ACE-NY is requesting the Commission to issue an order by its October 12, 2023 session to authorize the contract price adjustment mechanism that supports Under Development Projects. The petition attempts to rationalize the need for the adjustment mechanism by comparing the inflation strike price provision in NYSERDA’s 2022 solicitation.

ACE-NY draws these conclusions based on PA Consulting’s assessment of economic circumstances that suggested Under Development Projects are faced with “economic disruptions, supply chain and labor shortages, and substantial increase in demand for new renewable resources.”⁷ ACE-NY proposes an adjustment factor on each project so that Under Development Projects will become economically viable and claims this is necessary to meet a viable schedule to achieve the 2030 goal.⁸ Yet, PA Consulting’s assessment did not consider “specific circumstances faced by individual renewable energy project or developer.”⁹ Nor did they analyze which portion of Under Development Projects would be successful, fail, or offer new projects in subsequent solicitations due to the number of judgement calls that would be required.¹⁰ While PA Consulting focused on the financial aspects, it did not consider or speak to whether the sought adjustment mechanism could overcome supply chain or labor shortages among the increase demand of renewable resources. Therefore, it appears ACE-NY and PA Consulting are proposing

⁵ 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, PA Consulting, (PA Affidavit), June 7, 2023, at ¶ 6.

⁶ Petition, at 21.

⁷ PA Affidavit, at ¶ 10.

⁸ Petition at 29, “Providing a mechanism that would permit the Under Development Projects to remain in the development cycle would allow NYSERDA to maintain the pipeline of viable projects it has already carefully selected and shift its focus on procuring the significant amount of renewable energy still needed to achieve CLCPA mandates.” See also, footnote 11 below.

⁹ PA Affidavit, at ¶ 6.

¹⁰ *Id.*, at ¶ 74.

an adjustment factor with no guarantee that the 2030 goal will be met.¹¹ Without such guarantees, UIU opposes the petition as requested and suggests the focus be on supporting only those projects worthy of ratepayers' support.

DISCUSSION

ACE-NY claims the proposed adjustment mechanism, “would restore viability to support project completion, while ensuring efficiency, transparency, and simplicity in their application.”¹² Efficiency and simplicity criteria to develop an easy to apply mechanism are not sufficient standards to support the proposed adjustment mechanism for competitively bid projects that are now seeking more money. Additionally, transparency is not applicable in this instance either. While the NYSERDA solicitation rules and selection criteria are transparent, the details of how costs are evaluated are not so as to maintain developers' proprietary information and to avoid gaming of bids. From UIU's perspective, the foundational goal of any adjustment is to keep the cost adjustment as low as possible.¹³ UIU suggests first a screening process for the Under Development Projects to narrow the list and, for those who that pass the screen, evaluate the costs in detail.

I. Proposed Screening to Identify the Most Viable Projects

UIU does not support a blanket single adjustment mechanism for all projects in each of NYSERDA'S solicitations RFP 3257 through RESRFP22-1. UIU suggests the Commission develop a screening process to narrow the projects to those more likely to succeed. UIU suggests the Commission develop the screening criteria by reviewing the key drivers in the Operational Projects' success and the key drivers in selected projects that have since cancelled (“Cancelled Projects”) and assess if those factors are still relevant. Based on this review and considering State enacted legislation and the PSC orders that support and accelerate renewable generation

¹¹ *Id.*, at ¶ 74, “While it will always be the case that unforeseen obstacles still may cause a specific project to be cancelled, it is our opinion that the proposed Adjustment Mechanism should facilitate project completion of Under Development Projects in time to contribute to achievement of the CLCPA's renewable energy goals.”

¹² Petition, at 21.

¹³ UIU acknowledges that PA Consulting conducted an analysis that suggests there is a net benefit of \$1B. UIU has a long record of advocating for sensitivity and scenario analysis on benefit costs analysis beginning with our filing in 14-M-0101 on October 24, 2014. Therefore, without such information UIU is reticent to accept the conclusions.

integration in our electric system, develop the criteria. While UIU understands the 2030 goal, rate payers should not be throwing good money after potentially bad projects. Notwithstanding that minimizing costs to consumers should be the final goal, at this stage costs should not be the only consideration. The project's location and the electric value it provides to our system, siting issues, and number of projects a developer has in the pipeline should also be considered.

For example, UIU reviewed the inventory of large-scale renewable projects reported on Open NY¹⁴ with the focus on RFP 3257 and RESRFP17-1 because PA Consulting suggests that these projects are more mature. Of the fourteen NYSERDA RFP 3257 awarded projects, seven were for new facilities, of which one was cancelled, and three are under development. Twenty-seven new renewable projects were selected in RESRFP17-1 of which seven are operational, seven have been cancelled, and 13 are under development. Of the NYSERDA 2017 solicitation, six solar projects with a capacity of 19.9 MW are operational while six solar projects of the same size are under development. All these Operational Projects have a higher New York Independent System Operator ("NYISO") interconnection queue number that could indicate these Operational Projects were initiated more recently than those Under Development Projects with a lower queue number. Coincidentally, the RESREP17-1 completed solar projects are all from the same developer. UIU questions why was one developer able to complete six projects while the other developers have not made progress? It could be the Under Development Projects may have encountered extraneous impediments such as siting opposition or it could be those Operational Projects selected better sites, were better managed, or have fewer projects in their pipeline and able to focus their efforts. Further review of these projects and other solicitations' results can inform what criteria to apply for the screening.

After the screening criteria is developed, UIU suggests that the Commission apply this to the oldest solicitations first and then assess the projects costs to determine if a contract modification is warranted.

II. The Commission Should Carefully Scrutinize Each Project's Costs

ACE-NY explains the possible range of outcomes if the petition is denied. They claim some projects may be cancelled, some may offer the same projects into future solicitations, and

¹⁴ <https://data.ny.gov/Energy-Environment/Large-scale-Renewable-Projects-Reported-by-NYSERDA/dprp-55ye>

some may offer projects of different size, location, and /or configuration. ACE-NY claims those project offerings in subsequent solicitations will be at a higher strike price.¹⁵ While the strike price may be higher, the project would still have to be selected in a competitive process. Even if a project is selected again with a higher strike price in the future, the resulting costs to rate payers could potentially be lower than the cost of the adjusted mechanism.

PA Consulting described how developers' proposals account for projected equipment costs that reflect positively or negatively efficiencies, financing costs, and expected escalation factors.¹⁶ At the time of the REC solicitation submission date and module procurement date, PA Consulting explains that the developer's bid would have considered data such as the National Renewable Energy Laboratory ("NREL") assessment of actual and projected solar PV and land-based wind overnight costs. Based on this assessment, the developer would have adjusted its bids that reflects their expectation of the equipment and financing costs. The affidavit presents Energy Information Agency data that illustrates the average value of the PV modules prices accounts for 40% of the overall solar PV costs.¹⁷ The average value of a solar module in 2018 was \$0.45/peak watt_{DC} and in 2021 was \$0.34/peak watt_{DC}, a 24% decline.

PA Consulting presents tables of the proportion of the overall cost to build the project by cost components of utility scale solar PV and land-based wind.¹⁸ These cost components were assigned a respective index category that included module, turbine, steel, cement, construction, and electric power and a specialty transformer mechanism. The adjustment mechanism relies on the proportion by the cost component and the ratio of price or index as of the solicitation deadline and the price or index as of the trigger deadline.¹⁹ Yet relying on these indexes and not an assessment of what the developer actually included in their bid, a developer could be over compensated if their original bid had not assumed such significant declines in technology costs. Additionally, developers may have hedged portions of the projects' costs components to mitigate the risk of their fixed price offer. Giving these projects additional compensation based on a generic adjustment mechanism could be subsidizing the prudent contracting actions already taken place.

¹⁵ Petition, at 5.

¹⁶ PA Affidavit, at ¶ 21.

¹⁷ *Id.*, at Table 3.

¹⁸ *Id.*, Tables 15 and 16.

¹⁹ *Id.*, at ¶ 67.

Worse, providing an adjusted REC price to developers who did not manage risk is rewarding poor commercial decisions.

The Commission and its Department of Public Service staff have a wealth of experience reviewing details of utilities' proposed projects in rate cases and the corresponding financing structures. UIU suggests the most equitable adjustment to a competitively bid contract would be that the Commission use those resources to assess each project that passes the screen, focusing on the most mature projects first. UIU contends the adjusted prices should produce outcomes that are clearly beneficial to the consumers of New York. Therefore, the focus should be on adjusting only those hard costs and financing costs that have increased and absolutely no adjustment should be given to the developers' overhead costs. Project developers seeking such support should be more than willing to share relevant data with the Commission under a confidential review so that their project can proceed. If these developers are supportive of advancing the renewable industry one would expect this can be done expeditiously.

CONCLUSION

For the foregoing reasons, UIU respectfully urges the Commission to consider the recommendations herein.

Respectfully Submitted,

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