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**STATE OF NEW YORK**

**PUBLIC SERVICE COMMISSION**

Case 24-M-0433 – In the Matter of the Rules and Regulations for the Environmental Review, Permitting, and Siting in this State of Major Renewable Energy Facilities and Major Electric Transmission Facilities Under the Renewable Action Through Project Interconnection and Deployment Act.

**COMMENTS OF AES CLEAN ENERGY, LLC**

**ON**

**NEW PART 1100 (GENERAL PROCEDURES), PART 1101 (MAJOR RENEWABLE ENERGY FACILITY SITING), AND PART 1102 (MAJOR ELECTRIC TRANSMISSION FACILITY SITING)**

**April 18, 2025**

## I. Introduction

AES Clean Energy Development, LLC (“AES”), submits these comments in response to the Office of Renewable Energy Siting and Electric Transmission’s (“ORES”) proposed draft regulations for the environmental review, permitting, and siting in New York of major renewable energy facilities and major electric transmission facilities under the Renewable Action Through Project Interconnection and Deployment Act (“RAPID Act”). The proposed rules consist of a new Chapter XI, Title 16 of NYCRR Part 1100 General Procedures (“General Procedures”)<sup>1</sup>, Chapter XI, Title 16 of NYCRR Part 1101 Major Renewable Energy Facility Siting (“Major Renewable Energy Facility Siting”)<sup>2</sup>, and Chapter XI, Title 16 of NYCRR Part 1102 Major Electric Transmission Facility Siting (“Major Electric Transmission Facility Siting”),<sup>3</sup> published on December 18, 2024. AES will provide comments and suggestions for ORES to consider on the General Procedures and the Major Renewable Energy Facility Siting draft regulations.

AES continues to support the Climate Leadership and Community Protection Act (“CLCPA”) and appreciates ORES’s purpose – to expedite renewable energy project permitting and agrees with the RAPID Act’s move of ORES under the Department of Public Service (“DPS”). AES advises the Public Service Commission to expeditiously consider the comments submitted and finalize the proposed regulations as quickly as possible. Given the comment deadline extension the regulations will not be finalized by the previous April 20, 2025, deadline. It is unclear when ORES and the New York Public Service Commission (“PSC”) will finalize the regulations, additional delays at this stage makes it difficult to plan for project filings, as changes to the regulations may impact substantive filings. The regulations for large-scale renewable projects have changed three times in four years. Delays finalizing the regulations impose further uncertainty on the “rules of the game” applicable to major renewable energy projects creating risk and delaying New York achieving the targets of the CLCPA. Moreover, additional delays push against the intention of creating ORES- for expedited renewable project permitting in New York.

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<sup>1</sup> Office of Renewable Energy Siting and Electric Transmission. [Chapter XI, Title 16 of NYCRR Part 1100 General Procedures](#) (“General Procedures”), filed December 18, 2024. Case 24-M-0433.

<sup>2</sup> Office of Renewable Energy Siting and Electric Transmission. [Chapter XI, Title 16 of NYCRR Part 1101 Major Renewable Energy Facility Siting](#) (“Major Renewable Energy Facility Siting”), filed December 18, 2024. Case 24-M-0433.

<sup>3</sup> Office of Renewable Energy Siting and Electric Transmission. [Chapter XI, Title 16 of NYCRR Part 1102 Major Electric Transmission Facility Siting](#), filed December 18, 2024. Case 24-M-0433.



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## II. AES Clean Energy

AES was founded in 1981 and is a U.S.-based Fortune 500 global energy company with headquarters in Arlington, Virginia and offices in many locations in the U.S., including New York City. AES owns and operates a portfolio of more than 9.1 GW of renewable energy projects including more than 600 utility-scale and community solar, wind, energy storage, and hybrid projects across 28 states. 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 3.8 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 61 projects representing more than 847 MW of energy resources including Valcour Wind, a portfolio of 612 MW of operating wind projects. AES was recently awarded 100 MW of solar in the 2023 Tier 1 solicitation and 82 MW of wind in the 2024 Tier 1 solicitation.

Of the 20 major renewable facilities permitted by ORES to date, AES is the owner of nine of the permits. In addition, AES has another seven projects at or near the filed application stage. AES' experience with the ORES Article VIII process is unparalleled and we respectfully suggest that the comments below be considered by ORES and the PSC in finalizing the regulations.

## III. Three Highlighted Issues, Remedies, and Rationales

As will be detailed below in the comments, AES is highlighting three particularly important issues with the draft General Procedures and Major Renewable Energy Facility Siting regulations.

1. **Change in siting permit expiration:** Section 1101-3.1(i) states that "The Siting Permit will automatically expire if the facility does not achieve commencement of commercial operation within three (3) years from the date of issuance."<sup>4</sup>
  - **Remedy:** Revise this section to state "seven years" from commencement of construction.
  - **Rationale:** Currently, projects have seven years from the date of permit issuance to commence commercial operation. Under Article 10, projects had five to nine years. Given the current political climate and uncertainty at the federal level, additional time will likely be needed to begin operations because of lengthy and uncertain federal permitting. The time limit should not run from permit

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<sup>4</sup> Major Renewable Energy Facility Siting, Subpart 1101-3. Major Renewable Energy Facility Uniform Standards and Conditions. Section 1101-3.1. Facility authorization. Section 1101-3.1(i) at p. 95.

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issuance because separate processes across different agencies must align for a project to commence construction including contracting, offtake award, and interconnection).

- AES agrees that it would be advantageous for projects to move quickly from permitted to operations, but the proposed three-year time frame is insufficient to file compliance filings and construct a project. If ORES wants to encourage projects to proceed to construction and operation, it should not measure the time limits from permit issuance, it should measure from construction and provide a more realistic expiration. Though developers would retain the ability to seek an extension for good cause, this creates a financing risk that does not exist with a seven-year time frame.
  - Reducing this timeframe increases CLCPA risk, and ratepayer costs. Given the timelines associated with New York State Energy Research and Development Authority (“NYSERDA”) contracting and New York Independent System Operator (“NYISO”) interconnection, if ORES were to reduce the permit expiration date to three years, fewer projects would receive permitting and the New York renewable energy development pipeline would decrease and project costs could increase.
2. **AES requests guidance on how ORES will apply the new regulations** to projects at each stage of the Article VIII process.

“All applications for a major renewable energy facility siting permit pending before the former Office of Renewable Energy Siting established pursuant to Executive Law former section 94-c on April 20, 2024, are considered and treated as applications pursuant to this Chapter as of the date of filing of such applications.”<sup>5</sup>

- Based on this language, it is not clear how projects with applications pending under 94-c or Article VIII will be treated under this regulation when promulgated. The RAPID Act states that the uniform standards and conditions that ORES is directed to adopt:

“shall not apply in the consideration of any permits for siting, design, construction or operation of a major renewable energy facility for which a completed application has been received by ORES of renewable energy siting and electric transmissions prior to the adoption of amended uniform standards and conditions.”<sup>6</sup>
- **Remedy:** ORES should provide specific guidance on the applicability of provisions of the regulations to projects at each stage of the ORES process.
- **Explanation:** In General Procedures, Section 1100-1.1(b) and (c)<sup>7</sup> all applications for major renewable energy facility siting permits pending before the former ORES under 94-c are considered

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<sup>5</sup> General Procedures at p. 1.

<sup>6</sup> Public Service Law, Section 138(4)

<sup>7</sup> General Procedures Section 1100-1.1. (b)(c), Purpose and applicability at p. 1.

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applications under the new regulations as of the date of filing. All permits issued by ORES under 94-c or the Public Service Commission (“PSC”) under Article VII are considered permits issued by ORES. In addition, the RAPID Act states that the uniform standards and conditions that ORES is directed to adopt “shall not apply in the consideration of any permits for siting, design, construction or operation of a major renewable energy facility for which a completed application has been received by ORES of renewable energy siting and electric transmissions prior to the adoption of amended uniform standards and conditions.”<sup>8</sup>

- It is unclear which sections of the new regulations will be subject to which pending applications. For example, how will the new regulations apply to projects at each phase of development? Presumably, projects that have not yet filed an application will need to comply with all requirements of the draft regulations. Also, projects that have been deemed complete will not have to comply with pre-application and exhibit requirements in the new regulations.
- Additionally:
  - Will those projects follow the new hearing provisions?
  - If projects are in compliance, would they need to comply with new provisions of the regulations?
  - How will projects with filed applications, but not yet deemed complete, be treated?
  - What will happen with projects that anticipate filing an application immediately prior to the new regulations being finalized?
  - Finally, what about permitted projects, would the new regulations apply to permitted projects or project modifications?

AES seeks to prevent ad hoc adoption of new regulations and encourages certainty in the process for all stakeholders participating in ongoing permitting for projects.

3. **60-day notice:** Draft regulations will lengthen timeframes in pre-application portion of process for two reasons: first the draft regulations require all consultations be completed before the 60-day notice can be filed and second the time frames for certain consultations [avian and cultural] have been expanded and lengthened (from 30 to 60 days for each review for cultural).<sup>9</sup>
- Under Notice,<sup>10</sup> the draft regulations add a new requirement that the 60-day notice cannot be filed until the 1.3 pre-application consultations are “completed” (including State Historic Preservation

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<sup>8</sup> New York Public Service Law § 138(4) (2024)

<sup>9</sup> For example, compare Office of Parks Recreation and Historic Preservation Law 14.09 with Section 1101-1.1(d)(3)(iii)).

<sup>10</sup> General Procedures, Pre-application procedures (1100-1.3) (g) at p. 21.

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Office (“SHPO”) consultation). It allows the 60-day notice and community meeting notice to be the same notice. AES believes this requirement will either delay the filing of applications and/or delay community meetings. Further under (g) (2), “Failure of the applicant to file an application sixty (60) days after publication of the 60-day notice of intent required by this subdivision will result in the notice being deemed withdrawn without prejudice.”<sup>11</sup> ORES may send a notice requesting that the applicant publish the notice of application (again?) and serve the application within 30 days. If the applicant fails to respond, ORES can treat the 60-day notice as withdrawn.

- **Remedy:** Delete “and following conclusion of the pre-application requirements set forth in sections 1101-1.1 of Part 1101 of this Title or section 1102-1.1 of Part 1102 of this Title” from Section 1101-1.1(g)(1). As well, AES recommends to change the SHPO review timeframe from 60 days to 30 days and eliminate ORES draft occupied habitat determination in Section 1101-1.1(c)(6). AES suggests ORES include a clear provision for what happens if the Applicant responds.
- **Rationale:** One of the most effective reforms in 94-c from the siting process in Article 10 was the reduction of time in the pre-application process. This was an important reform that reduced mandatory pre-application timeframes from at least one year (plus study time) to 60-90 days minimum (plus study time). **The proposed changes would lengthen the pre-application process by at least 4-6 months, which is inconsistent with the CLCPA and state goals relating to the timely permitting of renewable energy projects.**
- AES does not agree that all consultations must be completed prior to the 60-day notice, this is not typical and is often out of the Applicant’s control as changes in project design require resubmission for certain consultations, thereby disincentivizing project changes which typically reduce impacts. These timeframes (the consultations and notice) should run in a parallel. In addition, SHPO currently reviews submission in 30 days. Given the number of submissions, 30 days is a more appropriate and reasonable timeframe. ORES does not need to provide a preliminary occupied habitat analysis, particularly if it does not utilize data provided by the Applicant’s studies. Instead, the Applicant should provide an estimated time frame, and ORES should provide a response and proposed take calculation within 30 days. AES suggests that ORES should coordinate these timelines with NYESRDA RFP bid and award timelines.

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<sup>11</sup> General Procedures, Pre-application procedures (1100-1.3) (g)(2) at p. 21.

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#### IV. Detailed Comments: Chapter XI, Title 16 of NYCRR Part 1100 General Procedures

##### a. Definitions<sup>12</sup>

- Commence construction or commencement of construction (n)<sup>13</sup>

As stated in (1100-1.2), the new definition means any “ground disturbance” (rather than “unlimited and continuous site clearing”) related to installation of the facility constitutes construction. Note, deletions in this paragraph no longer allow “activities to determine the adequacy of the site for construction” for application filings, only for permit filings (meaning post-permit). Finally, “limited” staging and “limited” tree cutting is allowed if required to perform pre-construction activities. It is unclear how this affects tree clearing or other “ground disturbance” needed for example, for Geotech work pre-permits. AES suggests that ORES revert to the original language: “activities to determine the adequacy of the site for construction,” to avoid activities required pre-permit that might constituted “ground disturbance.”

- Project area or facility site (ce)<sup>14</sup>

Adds definition of “project area or facility site” to include broad use of terms, including, “laydown yards” “staging areas” “locations of permanent and temporary easements” (turning radii). Of concern, what is the process if the developer does not know all the locations of the “facility site,” given the broad definition at time of application (turning radii). For instance, if the “facility site” is in different municipalities than the host municipality.

This broad definition could lead to the need for developers to seek a minor modification based on a change in "Project Area." However, due to the length of time between permit design and start of construction, it is likely that the change in equipment would produce inherent changes to layout and access needs. In addition, typically Engineering Procurement and Construction (“EPC”) firms are not under contract during the permit design and therefore cannot weigh in on final construction needs. Therefore, AES suggests amending the project area or facility site definition to the previous definition because the new definition creates ambiguity.

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<sup>12</sup> General Procedures, Definitions (1100-1.2) at p. 2.

<sup>13</sup> General Procedures, Definitions, (n) at p. 4.

<sup>14</sup> General Procedures, Definitions (ce), at p. 12.

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### **b. Section 1100-1.3: Pre-Application procedures<sup>15</sup>**

- Meeting with community members (b)<sup>16</sup>

In the pre-application procedures, under meeting with community members (b)(1), the draft regulations add a new provision for “at least one” community meeting for a project in a disadvantaged community (“DAC”).<sup>17</sup> AES suggest more robust guidance on how that meeting should be conducted, required notifications, where the meeting could take place and could it be combined with other community meetings? Also, when is the required period to conduct the DAC meeting. The amendments should include which parties are required to attend the meeting. Additionally, the additional meeting should be accounted for in the permitting timeline.

- Consultation with indigenous nations (c)<sup>18</sup>

Under the consultation with indigenous nations, the draft regulations add a new consultation requirement for indigenous nations that (unlike the community meeting) the mailing required with indigenous nations must take place before publication of the 60-day application filing notice. AES does not believe this timeframe is reasonable and suggests that the mailing requirement occur prior to permit application submittal.

In addition, the draft regulations ask:

“(iii)any potential impacts from the siting, construction, and operation of the facility **which may have a reasonably foreseeable or ascertainable effect on environmental or cultural resources of significance to any indigenous nations**, with whom the applicant is required to consult to inform the preparation of the exhibits to the application”

AES suggests that ORES define clearly “reasonably foreseeable or ascertainable effect.” This change requires that the application contain all correspondence with indigenous nations. As well, “The applicant shall consider any comments provided by indigenous nations and address such comments within the applicable application exhibit(s)” however, it is not clear how the consultation will be reviewed and deemed complete.

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<sup>15</sup> General Procedures, Pre-application procedures (1100-1.3) at p. 16.

<sup>16</sup> General Procedures, Pre-application procedures (1100-1.3) (b) at p. 17.

<sup>17</sup> General Procedures, Pre-application procedures (1100-1.3) (b)(1) at p. 17.

<sup>18</sup> General Procedures, Pre-application procedures (1100-1.3) (c) at p. 19.



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**c. Section 1100-1.4. General requirements for applications.**

- 1.4(a)(4)<sup>19</sup> contains new provisions for confidentiality, including a requirement that new portions of the cultural reports are required to be confidential. However, subsection (6) involves RTE species and says that confidential documents pursuant to this section of the regulations *can* be disclosed per an issued protective order, but this same provision allowing disclosure pursuant to a protective order isn't included in the subparagraphs in this section (4 and 5) for including the SRIS and Site Security Plan in the application and information regarding cultural resources in (5). So, are these materials (SRIS, SSP and cultural information) not allowed to be disclosed pursuant to a protective order? AES suggests consistent treatment of confidential information, streamlining the process for applicants and for the ORES review process.

In general, ORES requires a substantial amount of information be marked as “confidential” and redacted from the public record, even though the information is not particularly sensitive. This “over redactions” breeds public mistrust and makes exchange of information more difficult. Unless there is a compelling interest, for example Critical Energy Infrastructure Information, ORES should not require as many redactions in Applications.

**d. Hearing notices (Part 1100-8.2)<sup>20</sup>**

- General requirements (a)<sup>21</sup> requires a functional link to ORES’s website for hearing notices, but AES is concerned that a functional link might not meet the Secretary’s guidelines for filing.
- Service on specific persons, (e)<sup>22</sup> a new requirement is added for written notice to certain parties prior to the hearing. AES believes this should state “prior to the adjudicatory hearing,” otherwise, as stated, it could apply to both the public comment and adjudicatory hearing. AES suggests clarity in revising this section.

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<sup>19</sup> General Procedures, General Requirements for applications (110-1.4) at p. 23.

<sup>20</sup> General Procedures, Hearing Notices (1100-8.2) at p. 44.

<sup>21</sup> General Procedures, Hearing Notices (1100-8.2) (a) at p. 44.

<sup>22</sup> General Procedures, Hearing Notices (1100-8.2) (e) at p. 44

**V. Comments: Chapter XI, Title 16 of NYCRR Part 1101 Major Renewable Energy Facility Siting Subpart 1101-1. Major Renewable Energy Facility Pre-application Requirements.**

**a. Pre-Application Requirements (Part 1101):**

- Wetland Delineations, (a)(4)<sup>23</sup> requires that developers consult with “state and federal agencies to determine if any additional information shall be submitted in support of the delineation.” AES requests ORES clarify a few issues:
  - How would such information sharing coincide with the USACE and its permit timing?
  - Would developers be required to simply send information to USACE, is confirmation of receipt required?
  - Have ORES and USACE communicated about what they will do upon receipt of the information?
- Further, given the uncertainty of federal permitting under the new administration, clarity and flexibility should be accounted for in these regulations.
- NYS threatened or endangered species (c), of note, the draft regulations changed the requirement so now all survey work plans must be submitted *prior* to the start of the survey window. AES suggests that ORES add “unless otherwise approved by the office” to provide some flexibility. Developers would be hindered by the timing requirements in (CC) because surveys are often started before ORES approval to avoid seasonal window timing issues. If flexibility is not granted, AES requests that ORES be required to review the survey work plans in seven days, so applicants do not miss crucial seasonal windows.
- *Visual impacts consultation with ORES*(e),<sup>24</sup> states that “the applicant shall provide a preliminary visual impact assessment ... for informal staff review.” However, the regulations do not provide a timeline for submission to ORES, nor for how ORES will be reviewing the visual impacts. AES suggests this requirement be voluntary because it creates a financial and time resource burden in the pre-application process without any defined benefits. For example, the requirement does not explain if ORES only review the visual impact assessment or additional information. AES believes any changes in project design/layout will be addressed in the consultation, making this informal review not critical and potentially redundant.

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<sup>23</sup> Major Renewable Energy Facility Siting, Pre-application requirements (1101-1.1) at p. 1.

<sup>24</sup> Major Renewable Energy Facility Siting, Pre-application requirements (1101-1.1)(e) at p. 10.

## **VI. Subpart 1101-2. Major Renewable Energy Facility Application Exhibits.**

### **a. Exhibit 3: Location of Facilities and Surrounding Land Use**

- In, (a) a base map depicting recent-edition transportation network, topography, and built environment information”<sup>25</sup> is required. AES suggests defining “transportation network,” “topography” and “built environment” to provide clarity to developers.
- In (u)(1), the draft regulations require an “extraction well survey,”<sup>26</sup> which is not the same as previously used term “magnetometer survey,” but also states that magnetometer is the survey method. AES requests that ORES clarify the terminology and definitions.

### **b. Exhibit 5: Design Drawings**

- In (b)<sup>27</sup>, the draft regulations add 100-foot setbacks to non-participating residential property lines for temporary and permanent laydown yards for wind and solar facilities. AES suggests ORES continue allow temporary laydown to be within the setback with the justification that it impacts buildable area and capacity. Though some dispersed laydown areas can be considered where proposed components are (staged throughout construction), there will certainly be dedicated temporary laydown needs that cannot conflict with proposed components so capacity will be reduced. If the land is returning to prior form upon construction completion, AES believes that a setback will not be necessary, especially when things like roads, fences, and landscaping can occur within the setback.
- In (d), the draft regulations add a 25-foot setback from public road right of way for solar facilities. AES notes that there is already a 50-foot setback to centerline which in most cases would include this distance. In addition, there is not a definition of public right of way, and these are often difficult to determine without ALTA surveys or additional survey work. AES cautions that this requirement could cause delays for the early design of projects without a real clear benefit and suggests maintaining the 50-foot setback.

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<sup>25</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.3) at p. 13.

<sup>26</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.3)(u)(1) at p. 17.

<sup>27</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.5)(b) at p. 20.



#### **b. Exhibit 8: Visual Impacts<sup>28</sup>**

- In (4), the requirement would be to consult with indigenous nations for viewpoint selection. AES suggests clarity on the details of this consultation.
- In (c) *Visual contracts evaluation*, for screen plantings, applicants must provide simulations illustrating growth at zero to two years and five to seven years post installation. AES suggests clarity to demonstrate if ORES means the simulations need to show years 0, 1, 2, 5, 6, 7? Or would it be showing 2 years and 7 years to show maximum growth within the ranges?
- In (7)(iii),<sup>29</sup> the requirement states that the study area shall include an analysis of viewers from eye levels representative of each visual receptor and each array shall be analyzed individually unless surrounding arrays are consistently sloped based on existing topography. AES requests clarity on the intent of these additions to determine the impacts.
- In (7)(iv), it states, “analysis shall not assume obstacles unless a justification acceptable to ORES is provided.”<sup>30</sup> AES requests that ORES revise the language because if there is an obstacle, there would not necessarily be a glare to that receptor. AES requests clarity and rationale on this addition.

#### **c. Exhibit 13: Water Resources and Aquatic Ecology**

- In (a)(2) *Groundwater*,<sup>31</sup> the draft adds requirements for information that must be included in the ground water well survey including an invitation to join “stakeholder” list, and if they have an active well on their property, the applicant shall add resident to the “stakeholder list.” AES suggests that ORES clarify the term “stakeholder” because it should already include participants and non-participants within 1 mile.

#### **d. Exhibit 21: Electric System Effects and Interconnection**

- The draft for Exhibit 21<sup>32</sup> removes the requirement for the system reliability impact study to be performed in accordance with FERC requirements and replaces it with “an analysis of system reliability impacts.” AES does not think a different, non-NYISO related study is prudent or

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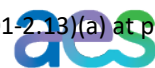
<sup>28</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.8)(j) at p. 47.

<sup>29</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.8)(7)(iii) at p. 53.

<sup>30</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.8)(7)(iii) at p. 53.

<sup>31</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.13)(a) at p. 62.

<sup>32</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Application Exhibits (1101-2.21) at p. 85.



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necessary. AES agrees that NYISO's processes should be integrated with the ORES process, however redundant studies will not ensure reliability and consistency.

## **VII. Subpart 1101-3. Major Renewable Energy Facility Uniform Standards and Conditions**

- In (k), *Construction noise*,<sup>33</sup> the draft adds a requirement to comply with all applicable substantive provisions of local laws regulating construction noise, without waiver or exception. However, it is AES' understanding that ORES has waived local laws on construction noise. AES suggests revisions to reflect the ability of developers to waive the local laws.
- ORES could add "if required" to "Implement noise and vibration mitigation measures associated with construction activities."
- In (o), *Threatened and endangered species*, the draft requirement places new limitations on clearing during the NLEB bat clearing window. Snag or cavity trees can only be removed in consultation with USFWS and only 10 potential roost trees may be removed. AES requests clarity on why ...
  - In addition, it adds a new section on reptile and amphibians: For Facilities that would impact NYS threatened or endangered reptile and or amphibian species, the permittee shall implement the following conditions during facility construction: (i) Employ dedicated T&E monitor(s) to be present for all work within known occupied and identified habitats, respectively, and implement a Monitoring and Handling Protocol. (ii) The monitor(s) shall have the necessary Endangered/Threatened Species License obtained from NYSDEC's Special License Unit or be listed as a Designated Agent on such a license. (iii) The number of necessary T&E Monitor(s) shall be determined in consultation with ORES staff. (iv) The T&E Monitor(s) shall be present to inspect work areas ahead of daily construction activities and shall continue to inspect periodically until construction activities stop for the work day. A daily inspection log shall be maintained and provided to ORES staff upon request. (v) The T&E Monitor(s) shall handle the species consistent with the conditions set forth in the Monitoring and Handling Protocol identified in section 1101-2.132 of this Part. (vi) Avoid construction activities within occupied habitat(s) to the maximum extent practicable. Where avoidance is not possible, the permittee will implement an Avoidance and Minimization Plan identified in section 1101-2.132 of this Part that meets the requirements of 6 NYCRR Part 182. AES requests that ORES clarify which requirements are applicable because reference to Part 182 is broad.

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<sup>33</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Uniform Standards and Conditions (1101-3)(k) at p. 103

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In addition, the requirement removed the reference to the invasive species baseline survey for the survivorship percentage. Now the draft states “Post- construction monitoring shall continue until an eighty (80) percent survivorship of native woody species or eighty-five (85) percent absolute cover of native herbaceous species appropriate wetland indicator status has been reestablished over all portions of the replanted area” with no exceptions if the IS survey shows a smaller percentage of survivorship or cover. AES suggests that ORES revert to the original language. The revisions would create a higher standard than pre-construction.

#### **VIII. Section 1101-4 Pre-Construction Compliance Filings**

- ORES created a new requirement for a long-term screen planting management program for the life of the facility requiring replacement of plantings<sup>34</sup> where visual screenings have failed – this is in direct contrast to the 2-year requirement in the (l) Visual Mitigation section of 1100-6.4.

#### **IX. Conclusion**

AES continues to support ORES’s objectives and remains a committed partner to New York in achieving the CLCPA. AES has a deep understanding of the ORES Article VIII process and has achieved 9/20 of the permits for major renewable facilities in New York. AES requests swift consideration of the comments raised and prompt finalization of the regulations to continue to support the progress of the CLCPA.

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<sup>34</sup> Major Renewable Energy Facility Siting, Major Renewable Energy Facility Uniform Standards and Conditions (1101-4) at p. 143.