STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

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

COMMENTS OF AES CLEAN ENERGY, LLC

ON

DRAFT CLEAN ENERGY STANDARD BIENNIAL REVIEW

September 23, 2024

I. Introduction

AES Clean Energy Development, LLC ("AES"), submits these comments in response to the New York State Energy Research and Development ("NYSERDA") and the New York Department of Public Service's ("Commission") Draft Clean Energy Standard Biennial Review ("Review").[1] AES recognizes the work and effort that resulted in a detailed and excellent Review. AES supports increasing the amount of Tier 1 resources procured annual as well as the three additional procurements beyond 2030 to meet the Climate Leadership and Community Protection Act ("CLCPA").[2] AES appreciates the opportunity to comment on the Review and looks forward to a robust conversation about how to continue to advance the CLCPA.

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. Across the country, AES owns and operates a portfolio of more than 6.9 GW of renewable energy projects including more than 550 utility-scale and community solar, wind, energy storage, and hybrid projects across 26 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 2.8 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 62 projects representing more than 850 MW of energy resources including Valcour Wind, a portfolio of 612 MW of operating wind projects. Recently, AES was awarded 1.2 GW of solar and wind projects under RESRFP22-1.

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[1] Case 15-E-0302, Draft Biennial Review, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard. Draft Clean Energy Standard Biennial Review ("Review") Filed July 1, 2024. https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={00B46F90-0000-C55E-BED0-C316A9EEA1CF}

[2] Climate Leadership and Community Protection Act. Senate Bill S6599. July 18, 2019. https://www.nysenate.gov/legislation/bills/2019/S6599

III. AES Response to Reform Proposals

a. Project Selection

AES agrees with many of the Biennial Review's conclusions about the Tier 1 REC market in New York. Namely, that, "the current scoring framework favors projects that bid and are modeled as least expensive based on their REC pricing, potentially, in some cases, over projects that could be more viable and offer greater net value to New York State."[3]

As presented in the Review, the suggestions for project selection reform are:

- Option: Reduce 70% price scoring component
- Option: Expand definition of cost component beyond bid price
- Option: Consolidation and re-allocation of non-price points

To respond accurately to the three reform options for Project Selection, AES would need clarity on the details of the minimum thresholds. For future solicitations, AES requests that NYSERDA provide certainty for the minimum thresholds in upcoming solicitations, including additional solicitations beyond 2030. In response to the Review, AES provides insight for both a high minimum threshold scenario and a low minimum threshold scenario.

In one scenario, if NYSERDA keeps high minimum thresholds, consistent with the RESRFP23-1 levels (with changes to interconnection requirements), AES believes the 70/30 (price/non-price criteria) would be a fair and competitive method for evaluating projects. The higher minimum thresholds would encourage a more mature (and smaller) project pool. Therefore the 70% weighted evaluation on price would best allow for competitive and mature projects to be compared against each other.

In a second scenario, if the minimum thresholds were reduced to RESRFP22-1[4] levels, then AES would suggest that 50/50 (price/non-price) scoring criteria would be the most effective way for NYSERDA to evaluate projects. With lower minimum thresholds, NYSERDA will be opening the potential project pool to more projects and will need more weight for the factors other than price to differentiate and predict each project's viability. If the solicitation targets are increased and three more solicitations are added,

[3] Review at p. 64

[4] Update to Renewable Energy Standard Purchase of New York Tier 1 Eligible Renewable Energy Certificates Request for Proposals (RFP) No. RESRFP22-1. Updated January 13, 2023. https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00P8z000002LTLBEA4&_gl=1*ebnxew*_gcl_au*MjEyNzE4OTIxNS4xNzIyMDAzOTc3*_ga*MTQxOTEzMDA3MC4xNjU2NTI1ODYx*_ga_DRYJB34TXH*MTcyNDI2ODM4NC4yMzEuMS4xNzI0MjY4NTU5LjU5LjAuMA.

NYSERDA would need to increase the number of potential projects that can be selected. AES reiterates its assertion from its comments on the Petition of the Alliance for Clean Energy New York To Address Post Covid-19 Impacts On Renewable Development Economics And Contract Considerations, that viable projects should be priced competitively and in the ultimate interests of the ratepayers.[5] As the Review stated, lower priced projects had been selected instead of more mature projects, and selecting more mature projects could offer more net benefits to New York.[6] AES cautions against selecting less mature projects on price alone using 70/30 scoring.

If NYSERDA uses the 50/50 scenario, AES suggests they provide clarity on the non-price criteria. As noted in the NY State Comptroller's Audit of the Commission and NYSERDA's implementation of the CLCPA, there was "vague and easily misinterpreted scoring guidance in two scoresheet subcategories."[7] AES agrees with the Comptroller that further clarity is needed. It will encourage developers to focus their resources on the elements more important to New York in achieving the goals of the CLCPA. AES also suggests that for future procurements, NYSERDA should publicly announce which projects were awarded in the previous solicitation before a new solicitation is released so developers can have clarity on the market trends, headroom and grid reliability needs. AES believes this certainty would result in more accurate bid prices and better project locations.

In either the 70/30 or 50/50 scenario, AES suggests that NYSERDA have clear minimum thresholds in advance of the solicitation so that developers can prepare strong, competitive bids that meet the needs of the market and promote reliability.

[5] 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. Filed August 28, 2023. https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={400C3D8A-0000-CA14-9B83-55866BF0542C}

[6] Review at p. 64.

[7] Office of the New York State Comptroller, Audit Climate Act Goals – Planning, Procurements, and Progress Tracking. Report 2022-S-4. Posted July 2024. https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2024-22s4.pdf. At p. 24.

b. Strike Price Adjustment

- Option: Authorize NYSERDA and DPS Staff to offer a strike price adjustment to awarded but not yet constructed projects if unforeseen events outside the control of project developers occur.

AES does not support a strike price adjustment based on "unforeseen events outside the control of the project developer." Risks exist in all markets, across industries, it is not in the ratepayers' interest to be accountable for those risks. Even if the developers identify every possible risk to a project in their bids, it is not reasonable that the state and the ratepayers should then be responsible for those risks.

c. Strike Price Escalation

- Option: Allow for adjustment in awarded strike price based on a market price index during the life of the contract.

AES is cautious about the strike price escalation option. In one scenario, if contracts are negotiated using the Consumer Price Index, prices could feasibly go up or down and the index is out of the control of the developers, making it less appealing. AES believes that adjusting the strike price every year would not be to the benefit of the state. In such a scenario, developers would be incentivized to underbid because the strike price could be adjusted annually, there would not be an incentive to de-risk the pricing as the projects would be already operational and NYSERDA and the state would need those projects for the reliability of the grid and in meeting the CLCPA. Strike price escalation would also be costly to implement for NYSERDA, having to review these details every year as well as more time and resources negotiating with developers. An escalator could create complexity and uncertainty, which could result in financing uncertainty. However, if the index were known and constant and applied equally across the portfolio of project, as a proxy for inflation, underbidding could be avoided.

d. REC Purchase Contract Tenor

- Option: Increase maximum Tier 1 contract tenor to 25 years

AES supports the concept of increasing the contract tenor for Tier 1 projects from 20 to 25 years because the longer tenor is better for securing financing and could reduce bid prices.

e. COMD Deadlines and Extensions

- Option: Allow for adjustments to the nature and consequences of COMD deadlines

AES supports the option to allow NYSERDA to adjust to Commercial Operation Milestone Data. NYSERDA should describe its discretion and limitations in the contracts to ensure fairness across projects and developers.

f. Index REC Methodology

- Option: Optimize the Index REC settlement structure

AES believes that optimizing the Index REC settlement structure to a monthly average formulation would not necessarily reduce costs for the ratepayers. Such changes would redistribute costs and influence bidding behavior, but at this time, given the renewable penetration and market structures, such changes would not reduce costs to ratepayers.

The current concern related to the settlement structure stems from the "shape" phenomenon - a difference in price between the "as-generated" monthly price vs. the "simple hourly average over the month" – the value that NYSERDA settles against. As intermittent renewable generation (solar in particular) increases, shape is forecasted to increase. Shape reduces revenue received by the generator and so as shape increases the gross revenue requirement (strike price) must increase to offset the shape. While transferring this price differential to NYSERDA by, for instance, settling with monthly “as generated” prices instead of “simple average,” would reduce strike prices, NYSERDA would need to pay a similar amount in procuring the index REC, and nothing material changes for the ratepayer. The underlying issue is not a suboptimal settlement structure but rather a fundamental mismatch between generation and load (supply and demand). One way to solve this fundamental issue is to recognize that storage needs to be paired with solar as a proportional requirement rather than a related but independent program. Storage serves to increase demand in high supply conditions and increase supply during non-solar generation hours.

IV. Other Issues - Permitting

AES agrees with the Review’s concerns and observations about permitting and siting- the importance of reducing time for ORES permits and smaller projects, and the challenge that the proposed New York State Department of Environmental Conservation (“NYSDEC”) freshwater wetland Part 664 regulations would add to the permitting process. These regulations would increase development costs, slow development and decrease prospective sites.[8] AES is concerned that the Part 664 wetland regulations introduce additional barriers to meeting the CLCPA.

These wetlands regulations would increase costs due to reassessing mitigation, design inefficiencies, risk assessments, environmental compliance, and engineering procurement and construction ("EPC"). The changes would increase costs and thus project bids, delay construction and create uncertainty to when projects can meet their commercial operational date. All these cost increases and delays would be a burden to rate payers, NYSERDA and the state.

AES estimates a 30% decrease in unconstrained available land for greenfield solar and wind projects that are vital to New York state. [9] Coupled with recent restrictions on agricultural land, renewable energy developers will be severely limited in the land available for greenfield renewable energy projects.

AES believes the regulations place an undue burden on renewable energy developers who would be using the land differently than other Commercial/Industrial uses. In its comments to NYSDEC, AES proposes that solar development be considered as an Electric Utility Line, under Part 663, and ORES should not adopt the Part 664 wetlands regulations for ORES permitted projects. Solar development still allows the land to function as a wetland. AES believes that solar panel installation impacts the land similarly to transmission line poles. Treating solar as Commercial/Industrial results in a higher and unwarranted burden to obtain a permit. NYSDEC should swiftly move to reclassify large scale solar development as an Electric Utility Line based on land impacts and in line with the importance of fighting climate change.

AES requests that NYSERDA and DPS coordinate with the NYSDEC to ensure coordination and harmonization of regulations to meet the CLCPA. AES strongly feels that the climate change goals should be an important part of the freshwater regulations in Part 664. Freshwater regulations should complement the renewable energy industry's efforts to fight climate change. The goals of the CLCPA should be of the utmost importance to NYSDEC, the energy transition and reduction in fossil fuel usage directly protect the environment, including freshwater wetlands, from the harmful effects of climate change.[10]

[8] Review, at p. 35.

[9] Wetland area, buffer, buildability of site, layout/parcel issues

AES' commitment to fighting climate changes and reducing dependency on fossil fuels through clean sources of energy supports the protection and preservation of these wetlands and the species that live there.

V. Conclusion

AES is proud of its partnership with NYSERDA and New York state as we all work together to achieve the goals of the CLCPA. AES is supportive and eager to support Tier 1 solicitation reforms that strengthen the program and maintain competitive procurement principles.