STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

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

COMMENTS OF AES CLEAN ENERGY, LLC

ON

DEPARTMENT OF PUBLIC SERVICE STAFF
PROPOSED DEFINITIONS OF KEY TERMS IN PSL §66-p

January 21, 2025

I. Introduction

AES Clean Energy Development, LLC ("AES"), submits these comments in response to the Department of Public Service Staff ("Staff") Proposed Definitions of Key Terms in the Provisions of the Climate Leadership and Community Protection Act[1] ("CLCPA"), codified in Section 66-p of the Public Service Law ("PSL") filed on November 4, 2024. AES continues to be a partner to New Yorks as it works to achieve its climate goals and through our operational and in development: utility-scale solar, battery storage and onshore wind renewable energy projects. AES echoes the concern of Staff that a lack of clear definitions leads to different interpretations and regulatory uncertainty.[2] AES encourages clear, plain language definitions of the key terms to provide regulatory certainty to all stakeholders. AES offers considerations for changes and clear language in the comments below. AES requests that the Public Service Commission ("Commission") promptly issue an Order approving the definitions and offers considerations.

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. AES was recently awarded 100 MW of solar projects in the 2023 RFP.

[1] State of New York Public Service Commission. Case 15-E-0302. DEPARTMENT OF PUBLIC SERVICE STAFF PROPOSED DEFINITIONS OF KEY TERMS IN PSL §66-p, filed November 4, 2024. ("Definitions").

[2] Definitions at p. 2

III. Comments

a. Comparison to the 2030 target language

- 2030 target language: "the state wide electric generation secured by jurisdictional load serving entities [LSEs] to meet the electrical energy requirements of all end-use customers in New York State."[3]

AES agrees with the premise of the proposed definition, "that scope of application encompasses the following resources: generation and energy storage units interconnected to the bulk power system in the New York Control Area (NYCA); power imported through inter-regional transmission interties; and generation and energy storage units in the NYCA that are interconnected at the local transmission and distribution system level, both in front of and behind the meter. Thus, whereas resources that operate behind-the-meter, but have metered outputs, come within the scope of application, that scope excludes, for instance, combined heat and power units and gas- and diesel-fired backup generation that are not metered."[4] AES suggests that the Commission remove energy storage from the proposed definition because storage itself is not generating electricity, it is charging and discharging from the electricity generated from the grid. That electricity used to generate and charge the battery storage should be the resource counted towards the 70 x 30 climate law. If New York counts the storage resources in the emissions mix, it could risk double counting.

- 2040 target: "statewide electrical demand *system*"[5]

Staff's assessment finds that the 2040 target does "not encompass every power-generating resource in the state, but only those that participate in the operation of the statewide electric grid and **do so in a routinized or systematic way.**"[6] AES suggests clarity in this definition on which resources are being excluded from the definition. As written, the definition leaves room for interpretation of what is intended by "operation" or "routinized or systematic." For instance, if non-renewable resources like natural gas plants or peaker plants would only be operational periodically, would that create a loophole for fossil fuel resources be exempt from the 2040 target? Given the expected increase in load for data centers, crypto mining etc; new behind-the-meter fossil fuel resources could come online and would exempt from compliance, per the definition as written. AES cautions that this definition should not serve as a loophole for fossil fuels and polluting peaker plants.

[3] Definitions at p. 8
[4] Id.
[5] Definitions at p. 9
[6] Id.

b. Zero Emissions

Staff proposes "that "zero emissions" refers to greenhouse gases only and not emission of other air pollutants"[7] AES agrees that zero emissions should refer to greenhouse gases only and understands that a reduction in greenhouse gas naturally is accompanied by a reduction in co-pollutants as well.

"When applying the 2040 target, the Commission should treat as cognizable emissions from both a resource's operations and its fuel production process." AES understands Staff's proposal to limit the emissions to operations and fuel production.

AES suggests more specific language to clarify the definition:

- "when applying the 2040 target, the Commission should treat as cognizable emissions from both a resource's operations and its fuel production process, not including activities associated with Scope 2 or Scope 3 emissions."

AES also agrees that the DEC's emissions process should:

1. "any power sector fuel source to which DEC's inventory attributes emissions cannot be counted as "zero emissions" under PSL §66-p(2)(b);
2. a resource to which DEC's inventory does not attribute emissions, but that serves principally to store energy for subsequent use, is to be viewed as taking on the character of its feedstock with respect to greenhouse gas emissions.

Put another way, Staff proposes to include out-of-state emissions from the production of non-fossil fuels and to modify DEC's approach by combining emissions from production and combustion when considering the zero emissions characteristic of a fuel source in the power sector."[8] AES agrees that out of state emissions imported into New York should be counted in the emissions total for the climate goals. Further, AES agrees that green hydrogen emissions should be treated differently than other non-renewable forms of hydrogen and supports Staff's proposal.

[7] Definitions at p. 13.
[8] Definitions at p. 19.

c. Net Zero Emissions

AES strongly encourages the Commission and DEC to work together to adopt a "net zero emissions" definition. AES suggests that "net zero emissions" could include carbon offset, carbon capture, advanced technologies, cap & invest or other mechanisms to arrive at "net zero". Additionally, AES suggests that the Commission limit offsets and adopt an industry standard cap on offsets.

Also, AES encourages the Commission to adopt the proposed framework that, "counts emissions from greenhouse gas emitting sources on a gross basis. The netting done under that framework does not obscure the fact of emissions from emitting resources; it merely arrives at an economywide total by subtracting emissions sinks from sources. All emissions from all covered sources of greenhouse gas emissions are counted in the first instance and no netting may be done for individual sources outside of the alternative compliance mechanism."[9]

d. Imports

AES supports Staff's proposal and clear equation, "that the Commission find in a given year that imports are in compliance with the 2040 target if adjusted net imports are equal to or less than 0."[10]

$$0 \geq Ia - E$$

$$Ia = I - I0$$

Where

Ia = *Adjusted Imports*

E = *Exports*

I = *Total Imports*

$I0$ = *Compliant Imports*

IV. Conclusion

AES continues to support the goals of the CLCPA in New York and encourages the Commission to carefully review the proposed definitions and those of commenters who are likewise working towards meeting the CLCPA. AES offers these comments to the Commission for consideration and encourages swift issuance of an Order approving the proposed definitions.

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[9] Definitions at p. 23.
[10] Definitions at p. 27.