

**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

**PETITION OF CLEAN PATH NEW YORK LLC
TO ADDRESS POST-COVID IMPACTS AND
ASSOCIATED CONSIDERATIONS CONCERNING
THE TIER 1 ELIGIBLE GENERATION COMPONENT
OF ITS CLEAN ENERGY STANDARD
TIER 4 RENEWABLE ENERGY CERTIFICATE CONTRACT**

Dated: June 14, 2023

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OVERVIEW

In a petition filed June 7, 2023 in this proceeding (the “Tier 1 Petition”), the Alliance for Clean Energy New York (“ACE-NY”) requested that the New York Public Service Commission (“Commission”) authorize the New York State Energy Research and Development Authority (“NYSERDA”) to incorporate an express adjustment mechanism provision in its Clean Energy Standard Tier 1 contracts (“Adjustment Mechanism”) for projects awarded through NYSEDA’s 2021 Renewable Energy Certificate (“REC”) Solicitation (“Under Development Projects”). As ACE-NY explains, this corrective action will produce RECs that are consistent with New York Public Service Law Section 65 and is required due to the unforeseen and severe market disruptions that have occurred since those solicitations were held. The changes have resulted in materially adverse impacts that have rendered the Under Development Projects economically infeasible.

The Tier 4 Renewable Energy Certificate Purchase and Sale Agreement entered into between Clean Path New York LLC (“CPNY”) and NYSEDA (the “CPNY Contract”) contemplates a generation portfolio that consists exclusively of Tier 1-eligible generation projects, identified as the Selected Project.¹ The CPNY Contract is based on a single strike price that accounts for the production and delivery of renewable, emissions-free megawatt hours into Zone

¹ Article I of the CPNY Contract defines the “Selected Project” as the “portfolio of [renewable generation facilities] that deliver Qualified Renewable Energy into Zone J via the Associated New Transmission Facility”

J. In order to accomplish that conveyance of clean energy to Zone J, a portion of the overall REC payment provided by NYSERDA under the CPNY Contract will be paid to the generation resources responsible for producing the emissions-free energy, and the balance of the NYSERDA payment will be used to fund the transmission line and transmission services that will deliver the emissions-free energy to New York City.

Therefore, two dynamics motivate CPNY to seek relief commensurate to that requested by ACE-NY in its Tier 1 Petition. First, the generation resources that comprise the Selected Project face the same economic headwinds detailed in the Tier 1 Petition and require commensurate relief in order to maintain economic viability. Fourteen of the twenty-three generation projects comprising CPNY's generation portfolio when the CPNY Contract was executed already held (and continue to hold) Tier 1 contracts with NYSERDA, and the other nine generation projects contracted as part of the Selected Project are Tier 1-eligible wind and solar projects that are experiencing exactly the same cost pressures since the time they were bid. The impacts of the documented economic disruptions relative to the Selected Project in the CPNY Contract were included in the quantitative and qualitative assessments conducted by PA Consulting Group set forth in the affidavit attached to, and in support of, the Tier 1 Petition.²

Second, CPNY's economic model is premised on an ability to pay the generation projects comprising the Selected Project the price of Tier 1 RECs in order to secure supply for delivery into Zone J via CPNY's new transmission line. To the extent that the Commission provides an

² See Tier 1 Petition at 36, n.144 ("As noted in the PA Affidavit, a subset of the Under Development Projects has been identified for Clean Path New York ("CPNY"), the State's first combined transmission and generation project, designed to provide renewable energy to New York City....The same economic disruptions discussed herein likely affect the CPNY Under Development Projects, and thus, may require further consideration under the structure of that part of the Commission's CES Program."); see also Tier 1 Petition Attachment A, PA Consulting Affidavit, at ¶ 91.

adjustment mechanism that shifts the price of Tier 1 RECs upward, CPNY will need to increase its payments to Tier 1 generators in order to induce their participation in CPNY. If the CPNY Contract is not adjusted commensurately with the Tier 1 contracts, the CPNY Project's economics will be eroded and the CPNY Project will be rendered non-viable.

Because of the facts outlined above, the CPNY Contract and Tier 1 contracts are fundamentally intertwined. NYSERDA and CPNY recognized this from the outset. The CPNY Contract contains provisions that recognize the interrelationship between the Tier 1 REC projects and the generation component of the CPNY Project. Specifically, Section 4.09(c) of the CPNY Contract includes a requirement that if NYSERDA provides relief to Tier 1 contracts under certain circumstances, it must provide similar relief to CPNY. The intent of this provision - that contractual relief for Tier 1 would necessarily dictate contractual relief for CPNY - is clear; it exists within the CPNY Contract because of a recognition by the parties of the intrinsic tie between Tier 1 and CPNY. This linkage is fundamental to the construct of the CPNY Project.

To preserve the economic viability of the CPNY Project, it is imperative that any relief the Commission authorizes pursuant to the Tier 1 Petition must be applied to the generation component of the CPNY Contract. Therefore, CPNY hereby petitions the Commission for an order directing NYSERDA to implement an adjustment to the generation component of the CPNY Contract commensurate with the relief provided in response to the Tier 1 Petition.

For the avoidance of doubt, this Petition does not seek any adjustment to the transmission component of the CPNY Contract.³ The relief sought via this Petition will not result in different

³ See Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates (issued April 14, 2022) ("Tier 4 Order"). The Commission recognized that the single price in the CPNY Contract inherently involves a combination of separate prices for generation and transmission. *Id.* at 126-127.

or additional relief from New York consumers than would otherwise be accomplished via the Tier 1 Petition.

Further, consistent with the timing of relief requested in the Tier 1 Petition, CPNY requests that the Commission act by its October 12, 2023 session, as schedule demands require that CPNY proceed forward expeditiously with securing the necessary financing to enable it to issue notices to proceed with respect to purchase orders valued in the hundreds of millions of dollars for long-lead infrastructure materials and equipment. Absent assurance via a Commission order that the CPNY Project can be economically viable, which it will not be if the economic imbalance noted above is not corrected, the CPNY Project cannot move forward.

BACKGROUND

In 2020, the Commission determined that there was a need for a Clean Energy Standard tier “aimed directly at reducing the reliance on fossil fuel-fired generation in New York City.”⁴ Based on that determination, the Commission directed NYSERDA to conduct a solicitation for Tier 4 RECs.

On January 13, 2021, in accordance with the Commission’s directive, NYSERDA commenced a competitive solicitation process for Tier 4 RECs. It received 33 bids from seven entities and, after a thorough review and analysis, it selected two projects, one of which was the CPNY Project specifically designed to increase the transfer capability from upstate New York to New York City to provide zero-emissions power to New York City via a new high voltage direct current transmission line combined with a portfolio of upstate renewable resources.⁵

⁴ Case 15-E-0302, *supra*, Order Adopting Modification to the Clean Energy Standard (issued October 15, 2020) (“CES Modification Order”) at 80.

⁵ The CPNY generation portfolio is comprised of 23 wind and solar projects, all of which are Tier 1-eligible generation projects. The second project, the Champlain Hudson Power Express

In finding that it was just and reasonable to approve the two Tier 4 contracts, the Commission rejected proposals to postpone making awards until a later date, emphasizing the execution risk that any delay would necessarily entail and identifying multiple reasons for moving forward expeditiously.⁶ The reasons included the substantial net societal benefits arising from the two projects,⁷ their ability to strengthen system reliability,⁸ and their ability to facilitate deployment of dispatchable renewable generation in New York City.⁹

The urgency upon which the Commission relied continues to exist. Without the CPNY Project, the State will be significantly hampered from meeting the clean energy mandates of the Climate Leadership and Community Protection Act (“CLCPA”).¹⁰ In this regard, in the CES Modification Order, the Commission adopted the “White Paper on Clean Energy Standard Procurements to Implement New York’s Climate Leadership and Community Protection Act” (which in turn referenced NYISO’s “Tale of Two Grids” analysis). The “Tale of Two Grids” analysis refers to the fact that, while “the upstate region of the State is supplied by 88% zero-emission resources, [it] accounts for only one third of statewide load. By contrast, the downstate

Project, will deliver Canadian hydropower directly to New York City. It does not have any Tier 1 component.

⁶ Tier 4 Order at 44-58; *see also* Tier 1 Petition at 26-29.

⁷ Specifically, the Commission noted that “CPNY produces significant benefits of up to \$15.3 billion relative to its costs of \$9.3 billion” as well as “real additional societal benefits in the form of more public health benefits from air quality improvements and more carbon savings.” Tier 4 Order at 55. The Tier 4 petition referenced in the Tier 4 Order described these benefits in greater detail, including significant investments in disadvantaged communities, nearly 8,300 short- and long-term jobs in project development, construction, and operation over the 25-year contract term, and a commitment of \$270 million of investments in activities that provide opportunities for the workforce and communities in the State.

⁸ Tier 4 Order at 46-53.

⁹ *Id.* at 55-56.

¹⁰ Ch. 106 of the Laws of 2019.

region (zones F-K) accounts for roughly two thirds of statewide load but is supplied by 69% fossil fuel-fired generation”, and, even within the downstate region, “New York City is particularly dependent on fossil fuel-fired generation.”¹¹ The Commission expressly recognized “that there is a need for a new tier of the CES aimed directly at reducing the reliance on fossil fuel-fired generation in New York City”, including to achieve the CLCPA’s 70 by 30 target.¹² The Commission also determined that, “Through Tier 4, ... the State is procuring the unbundled environmental attributes associated with renewable generation delivered into Zone J. These environmental attributes include the avoidance of GHG emissions, as well as the avoidance of local pollutants such as NOx, Sox [*sic*], and fine particulate matter.”¹³

Similar to the Tier 1 contracts, the CPNY Contract utilizes an Index REC structure wherein the price to be paid by NYSERDA for the RECs is determined by deducting prices reflective of energy and capacity market revenues from the contractually set strike price that represent the total revenues needed by the CPNY Project. While the project components are ultimately built up into a single strike price which encompasses the capital and operating costs of both the generation and transmission components of the Project, the relief sought herein is expressly limited to the generation component thereof.

For the reasons set forth herein, the Commission should direct NYSERDA to adjust CPNY’s strike price attributable to the generation portion of the CPNY Project, solely by the amount of the adjustment provided in response to the Tier 1 Petition, to address the inflationary

¹¹ CES Modification Order at 77-78.

¹² *Id.* at 79-80.

¹³ *Id.* at 80.

and other impacts that have imperiled the economics of the generation portfolio component of the CPNY Project.

DISCUSSION

POINT I

PROVIDING RELIEF TO CPNY IS CONSISTENT WITH THE COMMISSION-APPROVED TERMS OF ITS TIER 4 CONTRACT

There should be no question that the relief requested by ACE-NY for the Tier 1 contracts must be passed through to CPNY and its Tier 4 Contract. First, as noted above, Section 4.09(c) provides that if there is a change in law which adversely affects Tier 1 projects, and NYSERDA provides relief under the Tier 1 contracts, NYSERDA will provide similar relief to CPNY. This provision demonstrates an intent that the generation at the core of both Tier 1 and the CPNY Project be treated the same, regardless of whether the Tier 1 generation is dispatched as part of the CPNY Contract. Therefore, CPNY has filed this Petition seeking Commission approval that contractual relief for Tier 1 projects should apply equally for the CPNY Project and authorizing NYSERDA to modify the CPNY Contract accordingly.

Second, the Dispatch-Adjusted Monthly Price calculation in Section 4.05 of the CPNY Contract includes an adjustment for payments made to the Selected Project pursuant to their Tier 1 contracts. This provision demonstrates the clear linkage and overlap between Tier 1 and the CPNY Contract.

Third, Sections 4.12(b) and (f) of the CPNY Contract provide that Additional RECs produced by CPNY that are not purchased by NYSERDA under the CPNY Contract “shall be” converted to Tier 1 RECs and purchased by NYSERDA under the resources’ Tier 1 contracts. This requirement applies only to Additional RECs because Section 2.01 provides that NYSERDA will purchase all Tier 4 RECs produced by CPNY. Inasmuch as the conversion of the incremental

production of RECs beyond the levels set forth in the CPNY Contract (defined as the Additional RECs) from Tier 4 to Tier 1 is mandatory, the same relief is warranted across all environmental attributes produced by each Tier 1 resource within the Selected Project.

Fourth, Section 18.12 of the CPNY Contract establishes NYSERDA's agreement to modify the Tier 1 contracts for the resources that comprise the Selected Project to effectuate the CPNY Contract. The provision effectively supplants the resources' obligations under their Tier 1 contracts with the comparable obligations under the CPNY Contract. This provision was necessary to ensure that generation developers and owners with existing Tier 1 contracts would be willing and able to participate in CPNY. It is fully consistent with the intent of this provision to apply its requirements in what was clearly the unforeseen opposite direction (*i.e.*, modify the CPNY Contract to be consistent with the Tier 1 contracts to effectuate its terms) for the same reason – to ensure that developers and owners of Tier 1 contracts continue to be willing to participate in CPNY. Otherwise, this aspect of the CPNY Contract would be frustrated as the resources from which Additional RECs could be procured would be unwilling to participate in CPNY, as discussed in Point II, below.

As part of its justification for the Tier 4 contracts, NYSERDA pointed out that, “A key further attribute of CPNY is that the project's transmission bypasses the Central-East interface, which relieves congestion on that constraint, which in turn can avoid exacerbating congestion and curtailments of CPNY's and other future Tier 1 Upstate wind and solar resources....This helps reduce the system capital and fixed costs of meeting the Climate Act goals.”¹⁴ In other words, the

¹⁴ Case 15-E-0302, *supra*, Petition Regarding Agreements for Procurement of Tier 4 Renewable Energy Certificates (filed November 30, 2021) (“NYSERDA Tier 4 Petition”) at 33.

CPNY Project will provide an opportunity to maximize the use of Tier 1 resources and avoid the need for duplicative expenditures to achieve the goals of the CLCPA.

When the CPNY Contract is viewed holistically and in context of the Commission Orders approving both Tier 4 generally, and the Tier 4 Contracts specifically, there can be no question that a fundamental linkage exists between the generation resources that comprise Tier 1 and the CPNY Project. The above provisions, which were approved by the Commission, demonstrate a clear intent for the resources that comprise the generation portfolio (*i.e.*, the Selected Project) of the CPNY Project to operate on an equal footing and for the avoidance of express or implied impediments in either the Tier 1 contracts or CPNY Contract to achievement of the purpose of the CPNY Project. In particular, Sections 4.09(c) and 18.12 of the CPNY Contract reflect an intent to treat the resources the same under both types of contracts in order to avoid creating an artificial advantage to Tier 1 which would frustrate the CPNY Project and deny the opportunity to reduce the costs of achieving the CLCPA mandates.

POINT II

THE RELIEF SOUGHT BY CPNY IS CONSISTENT WITH THE RELIEF SOUGHT BY ACE-NY

As noted above, the most significant difference between the Tier 1 contracts and the CPNY Contract is that the CPNY Contract strike price accounts for both the cost of renewable resources and the cost of high voltage direct current electric transmission line.¹⁵ Therefore, while the strike prices for the Tier 1 resources exclusively reflect the cost of generation facilities, the strike price for the CPNY Project reflects the combined cost of the generation facilities and the transmission

¹⁵ The price variance between Tier 1 and Tier 4 is directly attributable to this difference. *See* Tier 4 Approval Order at 126 (“Tier 1 and Tier 4 serve different purposes, with the additional Tier 4 transmission cost occurring precisely because it is not feasible to develop Tier 1 projects at the Tier 1 price in Zone J itself.”).

line. By this Petition, CPNY is seeking an equitable contract adjustment solely for its generation portfolio. That is, CPNY is seeking an adjustment to its strike price specific to the generation component of the CPNY Contract that would be commensurate with the adjustment to the Tier 1 strike prices sought by ACE-NY, and not for costs associated with its transmission component.

If the Commission were to grant ACE-NY's petition but deny relief to CPNY, such action would be contrary to the intent of the CPNY Contract, as discussed in Point I, above. More directly, such action would undermine and frustrate the CPNY Project, as well as hinder achievement of the CLCPA's mandates, reductions in reliance on fossil fueled generating facilities in New York City, and improvements in air quality and other societal benefits established in the NYSERDA Tier 4 Petition and the Tier 4 Approval Order.

If CPNY does not provide the same level of net revenues to the resources that comprise the Selected Project, those resources would be commercially disadvantaged by participating in the CPNY Project and therefore motivated to participate only in Tier 1. As a matter of economic reality, absent an adjustment equivalent to that provided pursuant to the Tier 1 Petition, it is extremely unlikely that any other eligible renewable resources would seek to utilize the CPNY transmission line at the portion of the strike price allocable to the generation component of the CPNY Contract. The revenue received under the CPNY Contract would be lower than if the environmental attributes were sold under Tier 1. The CPNY Project would therefore not be able to provide emissions-free generation to New York City and not be able to achieve any of the purposes for which the Commission created Tier 4.

Nor is it viable for CPNY to allocate a higher percentage of the existing strike price to the generation owners while the strike price itself remains static. CPNY developed its Tier 4 strike price based on the cost of producing or procuring Tier 1 RECs plus the cost of its transmission

line. If more revenues were allocated to the generation component of the CPNY Project, the economics of the Project overall would be undermined and there would not be sufficient revenues to cover the costs associated with the transmission line. As in the above scenario, the end result would be that the CPNY Project could not be built, and thus, none of the purposes for which the Commission created Tier 4 would be achieved, with the attendant effects on the State's ability to meet the CLCPA mandates.¹⁶

In both scenarios, there would be cascading deleterious impacts. First, the City of New York would be unable to procure adequate renewable energy from sources directly serving New York City on a year-round basis.¹⁷ Second, some private building owners in New York City may be unable to comply with the requirements of Local Law 97, and, in any event, their ability to do so will likely come at a higher cost. Third, the output from some upstate renewable resources – if they are constructed as new projects -- would either be unnecessarily curtailed or additional transmission investment will be needed to allow energy deliverability.¹⁸ Either way, all New Yorkers will face higher costs. Fourth, the increased reliability and resilience benefits that would result from the construction of a new transmission path from upstate to downstate would be lost.

Finally, if the Commission fails to provide concurrent relief to CPNY, or if it fails to act on this request by its October 12, 2023, session, CPNY will be unable to attract capital for the CPNY Project or proceed with binding orders for the hundreds of millions of dollars in materials

¹⁶ CES Modification Order at 77-80.

¹⁷ Because of domestic demands for energy, Hydro-Québec may not make Tier 4 sales during the winter capability period.

¹⁸ As the Tier 1 Petition establishes, if the relief requested therein is denied, significant adverse economic and environmental impacts also will result and the transformation of the system for clean energy resources to be operated efficiently and cost effectively will be disrupted. Tier 1 Petition at 31-36.

and equipment needed. For the reasons set forth above, CPNY would not have a commercially viable path to satisfaction of its contractual obligations or the ability to procure and sell Tier 4 RECs. The absence of demonstrated commercial viability would chill both investor and financier interest, making the Project unfinanceable.

For all of these reasons, the Commission should provide equivalent relief to CPNY as it provides for Tier 1 contracts. The Commission also should direct NYSERDA to adjust the strike price allocable to the generation component of the CPNY Contract upward, utilizing the same formulaic mechanism authorized in response to the Tier 1 Petition.

CONCLUSION

For the foregoing reasons, CPNY respectfully requests that the Commission authorize NYSERDA to adjust the strike price in the CPNY Contract relative to its generation component to exactly the same extent, and no more, that it authorizes NYSERDA to adjust the strike prices in response to the Tier 1 Petition. Granting the relief set forth herein will ensure that New York remains on the path to complying with the CLCPA's mandates, facilitate the decarbonization of the electric system, and enhance system reliability in New York City. CPNY respectfully urges the Commission to act by its October 12, 2023 session in approving this relief to allay uncertainty regarding the viability of the CPNY Project.

Dated: June 14, 2023

Respectfully submitted,


Michael S. Blazer
Counsel for Clean Path New York LLC

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PUBLIC SERVICE COMMISSION**

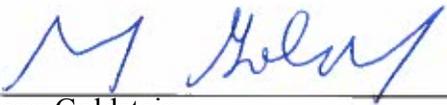
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VERIFICATION

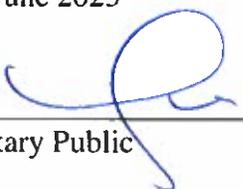
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

1. I am the Vice President of Clean Path New York LLC (“CPNY”), the entity that submitted the foregoing Verified Petition in the above-captioned proceeding.
2. I am authorized to sign this verification on behalf of CPNY.
3. I have reviewed the foregoing Petition and the statements of fact contained therein are true and correct to the best of my knowledge, information and belief.



Glenn Goldstein
Vice President

Sworn to before me this 13 day
of June 2023



Notary Public

JOY NOVIE
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01NO6343551
Qualified in New York County
Commission Expires June 13, 2024

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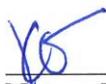
STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

1. I am the Vice President of Clean Path New York LLC (“CPNY”), the entity that submitted the foregoing Verified Petition in the above-captioned proceeding.
2. I am authorized to sign this verification on behalf of CPNY.
3. I have reviewed the foregoing Petition and the statements of fact contained therein are true and correct to the best of my knowledge, information and belief.



Shashank Sane
Vice President

Sworn to before me this 13th day
of June 2023


Krystle
Oliszewicz
Notary Public

