

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

CASE 18-E-0071 - In the Matter of Offshore Wind Energy.

ORDER DENYING PETITIONS SEEKING TO AMEND  
CONTRACTS WITH RENEWABLE ENERGY PROJECTS

Issued and Effective: October 12, 2023

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on October 12, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
Diane X. Burman  
James S. Alesi  
Tracey A. Edwards  
John B. Howard  
David J. Valesky  
John B. Maggiore

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BY THE COMMISSION:

INTRODUCTION

On June 7, 2023, the Alliance for Clean Energy New York (ACENY), Sunrise Wind LLC (Sunrise), and Empire Offshore Wind LLC/Beacon Wind LLC (Empire/Beacon) filed separate petitions (Petitions) collectively asking the Public Service Commission (Commission) to authorize the New York State Energy Research and Development Authority (NYSERDA) to amend the existing contracts for: (1) Renewable Energy Certificates (RECs) related to 86 contracts for on-land large scale renewable (LSR) generation projects; and (2) Offshore Wind Renewable Energy Certificates (ORECs) related to four offshore wind energy generation projects (i.e., Sunrise Wind, Empire Wind 1 and 2,

and Beacon Wind). The Petitions state that the combined effects of delays in permitting decisions by federal and/or State entities and of the COVID-19 pandemic have exposed the projects to unprecedented global and regional supply chain bottlenecks, high inflation, and increases in the cost of capital, driven by rising interest rates.<sup>1</sup> Further, the Petitions identify impacts associated with the war in Ukraine, including increased global demand for renewable energy and resulting shortages and price increases for key components and equipment.<sup>2</sup>

At bottom, the amendments sought by the ACENY, Sunrise, and Empire/Beacon Petitions would provide for an administratively determined adjustment to the REC and OREC prices established through NYSERDA's competitive procurement processes. In each case, the requested adjustment would significantly raise the prices paid for the RECs and ORECs represented by the 90 contracts. We deny the Petitions on the grounds that the relief sought is inconsistent with Commission policy favoring competition in generation procurement and for the other reasons discussed below.

#### BACKGROUND

The Petitions collectively seek relief related to 86 LSR contracts ostensibly entered into by NYSERDA since 2016 and 4 offshore wind contracts entered into by NYSERDA in 2019 and

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<sup>1</sup> See, e.g., ACENY Petition, pp. 3-4; Sunrise Petition, p. 2; Empire/Beacon Petition, p. 9.

<sup>2</sup> ACENY Petition, p. 4; Sunrise Petition, pp. 2, 19, and 22-24; Empire/Beacon Petition, pp. 2, 11.

2022.<sup>3</sup> To place the issues raised by the Petitions in proper context, we first review the history of the Commission's initiatives promoting development of renewable energy resources, including offshore wind generation. Second, we discuss the requirements added to the Public Service Law (PSL) in 2019 by the Climate Leadership and Community Protection Act (CLCPA) and the relevant elements of recent Commission orders implementing that statute. Third, we summarize the course of NYSERDA's offshore wind and CES Tier 1 procurements up through the filing of the Petitions.

#### New York's Renewable Portfolio Standard

New York has been a leader among the states in advancing renewable energy and recognizing the implications of climate change. In 2004, the Commission adopted the Renewable Portfolio Standard (RPS) program with the goal of making 25% of statewide generation capacity renewable by 2013.<sup>4</sup> To implement the program, the Commission adopted a central procurement model that authorized NYSERDA to spend ratepayer funds collected from a surcharge included in electric customers' utility bills to support development of renewable energy resources.<sup>5</sup> NYSERDA thereafter established a competitive solicitation process based on fixed-price bids, which offered renewable generation

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<sup>3</sup> The ACENY Petition (pp. 5, 7, 22) refers to 86 "existing REC contracts"; however, none of the 22 projects that received awards in NYSERDA's 2021 Clean Energy Standard (CES) Tier 1 solicitation have executed contracts with NYSERDA. Comments of NYSERDA, p. 3.

<sup>4</sup> Case 03-E-0188, Retail Renewable Portfolio Standard, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) (RPS Order). On January 8, 2010, the Commission issued another order increasing the RPS goal from 25% by 2013 to 30% by 2015. Case 03-E-0188, supra, Order Establishing New RPS Goal and Resolving Main Tier Issues (issued January 8, 2010).

<sup>5</sup> RPS Order, pp. 51, 55.

suppliers a premium payment for renewable energy certificates, or RECs, based on the renewable energy they provide to the New York grid.<sup>6</sup>

Under this approach, a successful bidder receives a fixed REC price throughout the lifetime of the contract for the environmental attributes associated with each megawatt hour (MWh) produced by the renewable energy facility. Thus, when responding to a solicitation, a bidder must base its bid on its estimate of the costs of building and operating the proposed project compared to its anticipated revenues for energy and capacity, whether obtained through the wholesale electricity markets operated by the New York Independent System Operator, Inc. (NYISO) or under bilateral contracts. Together, the REC payments and other market revenues support the construction and operation of the renewable generation project. The basic structure of the RPS program and NYSERDA's procurement process remained unchanged between 2004 and 2016.

#### The Clean Energy Standard and Offshore Wind Program

Through a February 26, 2015 Order in the Reforming the Energy Vision (REV) proceeding, the Commission initiated a process to revise the RPS program. The Commission instructed Department of Public Service Staff (Staff) to work with NYSERDA to prepare an options paper for procuring large scale renewables (LSRs).<sup>7</sup> On June 1, 2015, Staff and NYSERDA issued a proposal, entitled "Large-Scale Renewable Energy Development in New York: Options and Assessment," providing several options regarding the

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<sup>6</sup> RPS Order, pp. 3, 49, 60; see also Case 03-E-0188, supra, Order Authorizing Fast Track Certification and Procurement (issued December 16, 2004), p. 22.

<sup>7</sup> Case 14-M-0101, Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015).

future of LSR solicitations.<sup>8</sup> On August 1, 2016, following its review of the proposal and public comments, the Commission issued its Order Adopting a Clean Energy Standard, setting a new target by which 50% of electricity in New York would be generated using renewable resources by 2030 (50 by 2030), in support of the goal of reducing statewide emissions 40% by 2030.<sup>9</sup> The Commission recognized in the CES Order the potential for New York's offshore wind resources to contribute to statewide greenhouse gas emissions reductions in a fair and cost-effective manner and directed NYSERDA to examine what would be involved in tapping that resource.<sup>10</sup>

The CES program departs in some respects from the approach taken under the RPS program but in other respects remains consistent. Unlike the RPS, which is funded by a surcharge on customers' utility bills, the CES Order established an obligation on the load serving entities (LSEs) "to serve their retail customers by procuring new renewable resources, evidenced by the procurement of qualifying RECs," and to procure those RECs in proportion to the load they serve.<sup>11</sup> In keeping with the RPS program, however, NYSERDA remained responsible for incentivizing LSRs through a competitive solicitation process employing Fixed-Price REC contracts.<sup>12</sup>

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<sup>8</sup> Case 15-E-0302, Large-Scale Renewable Energy Development in New York: Options and Assessment (filed June 1, 2015).

<sup>9</sup> Case 15-E-0302, et al., Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Order).

<sup>10</sup> Id., p. 103.

<sup>11</sup> Id., p. 14; see also id., p. 78 ("The obligation is to be in the form of the procurement of new renewable resources, evidenced by the procurement of qualifying RECs, acquired in quantities that satisfy mandatory minimum percentage proportions of the total load served by the LSE for the applicable calendar year").

<sup>12</sup> Id., pp. 101, 107, 113.

To address the potential of offshore wind, NYSERDA finalized its Offshore Wind Master Plan and Offshore Wind Policy Options Whitepaper in January 2018.<sup>13</sup> On July 12, 2018, the Commission issued the OSW Order, which established the offshore wind procurement framework and target.<sup>14</sup> Although the Commission acknowledged in the OSW Order that “offshore wind will be substantially more expensive than onshore wind in its early stages,” the Commission found that offshore wind would be “an essential contributor” to statewide emissions reduction efforts and that the value of having offshore wind among the resources available to pursue the 50 by 2030 goal warranted “jump-starting the industry to serve New York State.”<sup>15</sup> The Commission directed NYSERDA to procure 2.4 gigawatts (GW) of offshore wind in two phases and directed LSEs to purchase ORECs from NYSERDA. Under this framework, offshore wind developers are to sell ORECs to NYSERDA and NYSERDA in turn is to sell them to LSEs, who are obligated to purchase them in proportion to their share of statewide load.<sup>16</sup>

The Commission weighed several options for how to structure NYSERDA’s OREC procurements. As with the RPS and CES programs, generation developers were expected to earn most of their revenues through the wholesale markets administered by the NYISO. All options for pricing ORECs involved competitive bidding and specification of a price that would inform what the offshore wind developer was to be paid per MWh of electricity it generated over the contract’s 25-year life. The Fixed Price

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<sup>13</sup> Case 18-E-0071, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (issued July 12, 2018) (OSW Order), pp. 2-4, 6, n. 9.

<sup>14</sup> Id., pp. 3-4.

<sup>15</sup> OSW Order, pp. 4, 15-16.

<sup>16</sup> Id., pp. 29-32, 62.



option had previously been used in the RPS and CES programs and was simplest but exposed developers to the entirety of energy and capacity price risk over the life of the contracts. Under this option developers would bid a fixed price along with their proposal and the winning developer would sell its ORECs to NYSERDA for that price. By contrast, the Index Price option would require developers to bid a "strike price," which would be adjusted during the contract term by subtracting a reference wholesale energy and capacity price to derive the monthly price that NYSERDA would pay for ORECs. Ultimately, the Commission adopted "a hybrid approach," directing developers to submit both Fixed prices and Index OREC strike prices in their bids to NYSERDA, and authorizing NYSERDA to opt for one or the other.<sup>17</sup>

The OSW Order aimed to balance several factors, including concern for the costs and risks allocated to ratepayers, the need to create sufficient financial certainty to encourage entrants (and their financial backers) into a wholly new industry, and the need to conclude auctions quickly to avoid the cost-inflation that was expected to follow neighboring jurisdictions' entrance into the race to offshore wind industry development in the Northeast and Mid-Atlantic.<sup>18</sup> By authorizing NYSERDA to solicit both types of bids and then structure contracts with winning bidders based on one or the other bid mechanism, the Commission managed to gather as much information as possible about the nascent marketplace for advantageous use by the State. Consistent with the view expressed by the Commission that "the financial risk involved in developing offshore wind in its early stages indicates that some form of adjustable future revenue streams may be appropriate," NYSERDA

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<sup>17</sup> Id., pp. 39-40.

<sup>18</sup> Id., pp. 41-43.

opted to use the Index OREC structure for the 2.4 GW of projects awarded contracts in the first offshore wind solicitation.<sup>19</sup>

The Climate Leadership and Community Protection Act

The CLCPA, which became law in July 2019, amended the PSL and expanded the State's climate response efforts beyond the CES program. The statute codified new decarbonization requirements for various sectors of the economy and adopted more ambitious renewable energy deployment targets.<sup>20</sup> In particular, the CLCPA directed the Commission to establish a program by June 30, 2021, to ensure that (1) in 2030, at least 70% of electric load is served by renewable energy (70 by 2030 Target), and (2) by 2040, "the statewide electrical demand system will be zero emissions" (Zero Emissions by 2040 Target).<sup>21</sup> The CLCPA also requires deployment of at least 9 GW of offshore wind generating capacity by 2035.<sup>22</sup>

In response to these aspects of the CLCPA, on October 15, 2020, the Commission issued the CES Modification Order to align the existing CES with the new CLCPA targets.<sup>23</sup> Among other things, the CES Modification Order directed NYSERDA to increase the rate of OREC solicitations,<sup>24</sup> anticipating that 5.8 GW of offshore wind capacity would be in service by 2030 and

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<sup>19</sup> Id., p. 38.

<sup>20</sup> L. 2019, ch. 106 (codified, in part, in PSL §66-p), §4.

<sup>21</sup> PSL §66-p(2).

<sup>22</sup> PSL §66-p(5).

<sup>23</sup> Case 15-E-0302, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020) (CES Modification Order).

<sup>24</sup> Id., p. 45 (referencing PSL §66-p(5)).

thus contribute to meeting the 70 by 30 Target.<sup>25</sup> The Commission also adopted a new CES Tier 4 program, making support available to renewable resources either located in, or whose energy is directly injected into, New York City.<sup>26</sup> On April 14, 2022, the Commission approved two CES Tier 4 contracts with: (1) H.Q. Energy Service (U.S.) Inc., which would deliver 1,250 MW of energy to New York City via a high voltage direct current (HVDC) transmission line referred to as the Champlain Hudson Power Express (CHPE); and (2) the Clean Path New York project, which would deliver 1,300 MW of renewable energy to New York City also via a HVDC transmission line.<sup>27</sup> Although the Commission did not consider that the projects associated with any Tier 4 contracts would be in service by 2030 for purposes of achieving the 70 by 2030 Target,<sup>28</sup> it appears that the CHPE project is on target to be in service prior to 2030.<sup>29</sup>

On January 16, 2020, the Commission issued an order granting a petition requesting that NYSERDA be authorized to offer bidders in its CES Tier 1 solicitations an Index REC price

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<sup>25</sup> Id., p. 26 (incorporating energy from 5.8 GW of offshore wind into annual solicitation target as recommended in White Paper on Clean Energy Standard Procurements to Implement New York's Climate Leadership and Community Protection Act (June 18, 2020)), id., p. 46 (proposed offshore wind procurement schedule of 750 MW to 1,000 MW per year through 2027 would put the State on trajectory to achieving 9 GW offshore wind target).

<sup>26</sup> CES Modification Order, pp. 77-102.

<sup>27</sup> Case 15-E-0302, Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificate (issued April 14, 2022).

<sup>28</sup> Id., p. 27.

<sup>29</sup> Notices to Proceed with Construction associated with 14 of the 24 segments of the CHPE project have been issued. See Case 10-T-0139, Application of CHPE for a Certificate of Env'tl. Compatibility and Pub. Need Pursuant to Article VII of the PSL for the Constr., Operation and Maintenance of a HVDC Circuit from the Canadian Border to NYC.

option in future RES solicitations, beginning in 2020.<sup>30</sup> In so ruling, the Commission found that the use of an Index REC should “reduce the risk premiums that developers account for in their bids to accommodate for uncertainty in power market revenues, thereby lowering ratepayer costs on a per-REC basis.”<sup>31</sup>

At the Commission’s November 2020 session, we addressed a petition seeking authorization to provide renewable generation developers, whose projects had not yet commenced commercial operation, with a one-time option to modify their existing Tier 1 contracts by converting Fixed Price REC terms to Index REC terms.<sup>32</sup> The November 2020 Order noted that the Index REC “formulation is intended to increase the likelihood that a developer will satisfy its revenue requirement for a project, and ultimately reduce the per-REC costs to ratepayers,”<sup>33</sup> and found that “[l]inking REC prices to an index of market prices would meaningfully reduce project risk premiums and therefore lower financing costs” to the benefit of ratepayers.<sup>34</sup> The order also noted that “the Index REC option has been successfully used by NYSERDA for an offshore wind solicitation that produced competitive prices,” and directed NYSERDA to offer the Index REC option to the 65 renewable energy projects subject to the existing fixed-price, Tier 1 contracts.<sup>35</sup>

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<sup>30</sup> Case 15-E-0302, Order Modifying Tier 1 Renewable Procurements (issued January 16, 2020) (January 2020 Order).

<sup>31</sup> Id., p. 3.

<sup>32</sup> Case 15-E-0302, Order Authorizing Voluntary Modification of Certain Tier 1 Agreements (issued November 20, 2020) (November 2020 Order), p. 1.

<sup>33</sup> Id., p. 4.

<sup>34</sup> Id., p. 10.

<sup>35</sup> Id., p. 12.

NYSERDA’s Renewables Solicitations

In accordance with the CES Order, NYSERDA has held five CES Tier 1 solicitations to date, totaling 8,797 MW of projects awarded contracts. The ACENY Petition includes three contracts entered into pursuant to the last RPS solicitation held in 2016. Table 1 below provides information related to each of the solicitations subject to the Petition.<sup>36</sup> Of note, none of the 22 projects awarded in the 2021 Tier 1 solicitation have entered into contracts with NYSERDA.<sup>37</sup>

**Table 1: Strike Prices per NYSERDA Solicitation**

Solicitation	Technology	Number of Contracts	Avg. Strike Price (\$/MWh)	Capacity Per Solicitation
RPS-3257	Solar	3	\$83.15	50 MW
RESRFP17-1	Solar	10	\$77.52	1,339 MW
	Wind	2	\$66.49	
RESRFP18-1	Solar	14	\$68.26	1,661 MW
	Wind	2	\$67.12	
RESRFP19-1	Solar	17	\$66.26	1,278 MW
	Wind	1	\$71.59	
RESRFP20-1	Solar	15	\$53.03	2,111 MW
RESRFP21-1	Solar	22	\$63.08	2,408 MW

Recognizing the effect of inflation on the renewable energy industry, NYSERDA engaged in a stakeholder process to design an inflation adjustment mechanism prior to its most recent Tier 1 and offshore wind solicitations.<sup>38</sup> In its most recent Tier 1 solicitation, initiated on September 21, 2022, NYSERDA adjusted its approach. The pro forma contract included as part of the 2022 Tier 1 solicitation incorporated an optional

<sup>36</sup> Id., p. 20, Table 8.

<sup>37</sup> NYSERDA Comments, p. 45

<sup>38</sup> Id., pp. 31-34.

inflation adjustment mechanism that was not available in prior REC solicitations. This mechanism adjusts the REC strike price using a formula that incorporates a forecast using a Producer Price Index (PPI) for All Commodities, applying an adjustment to 75% of the bid price to account for specific inflation that occurs between the proposal's submission to the start of construction.<sup>39</sup> In response to this solicitation, NYSERDA received 65 bids comprised of 35 solar, wind, and hydroelectric projects, representing more than 4,400 MW of renewable energy. The bids were also paired with more than 698 MW of large-scale energy storage.<sup>40</sup> NYSERDA has not yet awarded any contracts under this most recent solicitation.

At present, NYSERDA has contracted with four offshore wind projects, totaling about 4.23 GW of capacity.<sup>41</sup> In October 2018, following the Commission's issuance of the OSW Order, NYSERDA released its first offshore wind solicitation, garnering 18 proposals from four developers.<sup>42</sup> NYSERDA ultimately selected two projects, Sunrise Wind and Empire Wind 1, totaling approximately 1,700 MW of capacity.<sup>43</sup> The OREC contracts were finalized in October 2019. Thereafter, following the

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<sup>39</sup> Id., pp. 33-34.

<sup>40</sup> <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Standard/Renewable-Generators-and-Developers/RES-Tier-One-Eligibility/Solicitations-for-Long-term-Contracts>.

<sup>41</sup> Id., p. 3. The Long Island Power Authority contracted in 2017 with Orsted and Eversource to develop the 130 MW South Fork Wind Farm, which is currently under construction and expected to begin operation in 2023. Information on all offshore wind projects in New York can be found on the NYSERDA website at: <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/NY-Offshore-Wind-Projects>.

<sup>42</sup> <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2018-Solicitation> (2018 OSW Solicitation).

<sup>43</sup> Id.

Commission’s Order Authorizing Offshore Wind Solicitation in 2020, NYSERDA ran its second offshore wind solicitation seeking up to 2,500 MW of capacity.<sup>44</sup> For the 2020 solicitation, developers were required to include plans to support port development. In January 2021, NYSERDA selected Empire Wind 2 and Beacon Wind, representing 1,260 MW and 1,230 MW respectively.<sup>45</sup> The OREC contracts were executed in January 2022.<sup>46</sup> All four of the projects awarded in 2018 and 2020 solicitations are the subject of the Sunrise and Empire/Beacon Petitions. Details related to the offshore wind projects are provided in Table 2.<sup>47</sup>

**Table 2: Existing Offshore Wind Projects**

Project	Project Capacity	Original Strike Price (\$/MWh)
Sunrise Wind	924 MW	\$110.37
Empire Wind 1	816 MW	\$118.38 <sup>48</sup>
Empire Wind 2	1260 MW	\$107.50
Beacon Wind	1230 MW	\$118.00

As with its most recent Tier 1 solicitation, NYSERDA has modified its approach in its offshore wind solicitation. Its third solicitation, NY3, which was initiated in January 2022, incorporated an inflation adjustment mechanism and interconnection cost sharing adjustment that were not available in prior OREC solicitations.<sup>49</sup> The optional inflation adjustment

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<sup>44</sup> <https://www.nyserda.ny.gov/All-Programs/Offshore-Wind/Focus-Areas/Offshore-Wind-Solicitations/2020-Solicitation> (2020 OSW Solicitation).

<sup>45</sup> Id.

<sup>46</sup> See id. (Contract(s) Executed).

<sup>47</sup> See NYSERDA Comments, p. 18, Table 5.

<sup>48</sup> Levelized over the 25-year contract term, the Year 1 strike price is \$99.08/MWh with a 2% annual escalator.

<sup>49</sup> Id., pp. 32-33.

mechanism is based on specific commodity indexes for labor, fabrication, steel, ultra-low sulfur diesel, and copper, and applies to 80% of the OREC bid price to account for whatever inflation occurs between the proposal's submission to the time at which the project's Construction and Operation Plan (COP) is approved by the federal Bureau of Energy Management (BOEM). NYSERDA received a robust response to the NY3 solicitation, with more than 100 total proposals for eight new projects from six offshore wind developers.<sup>50</sup> At the time of this Order, NYSERDA has not yet awarded any contracts under the NY3 solicitation.

#### THE PETITIONS

As noted above, the Petitions request orders from the Commission authorizing NYSERDA to adjust the contracts for each of the projects at issue through different adjustment mechanisms, specific to each Petition.

#### The ACENY Petition

The ACENY Petition requests an order from the Commission authorizing NYSERDA to incorporate an adjustment mechanism into 83 existing CES Tier 1 contracts awarded between 2017-2021, and 3 RPS contracts awarded in 2016. The ACENY Petition explains the general timeframe associated with developing the most recently built LSR projects in New York. It notes that, in addition to securing a REC award via a NYSERDA Tier 1 solicitation, a renewables project needs to obtain "permits and interconnection authorization ... followed by financing and construction arrangements, including the execution of contracts, to complete project development."<sup>51</sup> The ACENY Petition states that, to date, "the small subset of Awarded

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<sup>50</sup> Id., p. 33.

<sup>51</sup> ACENY Petition, pp. 2-3.



Projects able to complete this entire cycle and reach operation have been five to seven years in the making.”<sup>52</sup>

The ACENY Petition claims that “dramatic shifts in the global economy have caused a number of severe and unforeseeable economic disruptions since the fall 2021” that are negatively impacting the projects subject to the Petition.<sup>53</sup> The Petition attributes these economic disruptions to the COVID-19 pandemic, the war in Ukraine, and “unprecedented increases in demand for new renewable energy development ... as more States and countries implement their own climate initiatives.”<sup>54</sup> The Petition alleges that, “while developers also had been proceeding apace with Awarded Project development,” these changed circumstances “have eroded the viability of Awarded Projects that have not already been cancelled, are not operational and are not yet nearing operation (‘Under Development Projects’).”<sup>55</sup>

The ACENY Petition notes that, although NYSERDA has recognized these changed economic circumstances by incorporating “an inflation strike price adjustment mechanism in its” 2022 Tier 1 solicitation, the prior Tier 1 solicitations “do not currently contain an express inflation provision to offset the unpredictable and corrosive Post-COVID Impacts.”<sup>56</sup> The Petition notes that ACENY retained PA Consulting Group, Inc. (PA) to analyze, through an affidavit, the effects of the post-COVID economic impacts on the renewable energy industry and to propose

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<sup>52</sup> Id., p. 3.

<sup>53</sup> Id.

<sup>54</sup> Id., pp. 3-4.

<sup>55</sup> Id.

<sup>56</sup> Id., p. 4.

RECs contract relief for the 86 "Under Development Projects" subject to the Petition.<sup>57</sup>

The PA Affidavit provides 2 tables showing that, from 2016 to 2021, the baseline solar photovoltaic capital costs declined by 14.2%, and over the same time period the baseline overnight capital cost for land-based wind declined by 3.7%.<sup>58</sup> The Affidavit states that "[m]atched against these equipment cost reductions in this time frame were reasonable expectations that" inflation levels and interest rates would remain relatively low.<sup>59</sup> The PA Affidavit claims that these positive economic conditions were expected to persist through the response deadline for NYSERDA's 2021 Tier 1 solicitation (i.e., August 26, 2021), developers responding to each of NYSERDA's RECs solicitations from 2016-2021 "reasonably would have assumed that ... their project costs would decline from submission deadline to project completion," and this assumption would have been incorporated into project bid prices.<sup>60</sup>

The ACENY Petition and PA Affidavit examine two options to address post-COVID economic impacts: (1) cancellation of the RECs contracts for the 86 projects and subjecting those projects to future solicitations; or (2) amendment of the contracts to include adjustments for inflation and other factors that underlie development costs. The Petition asserts that cancellation of the contracts associated with the Under Development Projects is a worse option because, "by definition,

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<sup>57</sup> Id., p. 5 (referencing affidavit of Mark Repsher & Ashish Chaudhari in Support of ACENY's Petition to Address Post-Covid Impacts on Renewable Development Economics & Contract Considerations (PA Affidavit or Affidavit)).

<sup>58</sup> PA Affidavit, ¶¶26, 29.

<sup>59</sup> Id., ¶¶31, 32.

<sup>60</sup> Id., ¶¶33, 35.

[these or new projects] must necessarily be based on strike prices that reflect the higher project costs ... and if awarded, will reach operation much later.”<sup>61</sup> The Petition states that it “is not reasonable to assume all, or even a majority of, the Under Development Projects can be successfully offered as new projects,” particularly the more mature projects, which “are more likely to be facing [project related] deadlines that cannot be extended.”<sup>62</sup> As examples of impacts to more mature projects, the Petition points to land options that “could come up against termination dates with landowners unwilling to negotiate new terms,” as well as permits or interconnection agreements that “may also expire or new requirements [that] may be triggered.”<sup>63</sup>

The ACENY Petition proposes a one-time adjustment mechanism to the 86 contracts at issue, which the Petition asserts is necessary to restore viability and allow development to proceed uninterrupted. The proposed adjustment mechanism would take data from publicly available price indexes of renewable project development inputs and use generic formulae (one each for solar and land-based wind) to translate changes in those indexes over a project-specific timeframe into an updated REC price for each project.<sup>64</sup> The Petition relies on the PA Affidavit for an explanation of the proposed mechanism.

The PA Affidavit asserts that an adjustment mechanism based on separate formulae for solar and land-based wind is necessary because of their different project economics.<sup>65</sup> Under

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<sup>61</sup> ACENY Petition, p. 5.

<sup>62</sup> Id., p. 27.

<sup>63</sup> Id.; see also id., p. 25 (“it is reasonable to presume Under Development Projects are no longer economically viable under their existing contract terms” and thus “cannot be built”).

<sup>64</sup> Id., p. 21.

<sup>65</sup> PA Affidavit, ¶64.

each adjustment formula for solar and land-based wind, the Affidavit breaks a generic project into specific components that are weighted based on their generic costs. Using the formula for solar projects as an example (see Table 3 below), the Affidavit proposes to use publicly available information obtained from the National Renewable Energy Laboratory (NREL) to provide a generic cost breakdown for four project components, each with associated percentages based on their contribution to overall project cost, as follows: (1) solar modules (40%); (2) specialized equipment and associated labor (17%); (3) structural balance of system - i.e., supporting components and auxiliary systems to deliver energy (20%); and (4) construction and overhead (23%).<sup>66</sup> The proposed formula for land-based wind uses the same approach but with somewhat different project components and cost percentages associated with each component.<sup>67</sup>

**Table 3: Solar Adjustment Mechanism Formula**

$$REC_{adj} = REC_{orig} * \left( 0.40 * \frac{Index_{T,Mod}}{(1 + MEF) * Index_{B,Mod}} + 0.17 * \frac{Index_{T,EPSTM}}{Index_{B,EPSTM}} + 0.20 * \frac{Index_{T,Steel}}{Index_{B,Steel}} + 0.23 * \frac{Index_{T,Construction}}{Index_{B,Construction}} \right) * Adj_{DC} * Adj_{TL}$$

As shown in Table 3, the Affidavit proposes to: (1) divide the cost of each project component as of the date when the developer enters into a procurement contract related to the

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<sup>66</sup> Id., ¶64, Table 15. In determining the cost contribution of each project component, the PA Affidavit claims it uses indices that “are regularly updated and are reasonably expected to remain available when the Adjustment Mechanism will be calculated for projects in the future.” Id., ¶ 63.

<sup>67</sup> Id., ¶66-67. This description of the formula applies to each component for both solar and land-based wind projects, except that the solar module component included in the formula for solar projects - represented by “Module Expectation Factor” or “MEF” - would apply the cost as “represent[ed by] the reasonable expectation of PV module cost declines (between REC Solicitation submission date and module procurement date).” Id., ¶66.

component (i.e., Index<sub>T</sub>) by the cost of such component as of the CES Tier 1 solicitation submission deadline associated with the project (i.e., Index<sub>B</sub>); (2) multiply the result for each component by the percent cost contribution of the component to the overall project cost - as explained in the preceding paragraph; and (3) add the results - as represented by the factors presented within the parentheses of the formula. The formula would then multiply this result by the original RECs price agreed to in the NYSERDA contract. In other words, this part of the formula would capture in the adjusted RECs price the presumed increase in overall project cost through examination of the presumed cost increases associated with each of the components of the project.

Finally, the proposed formula would take account of interest rate change effects for generic solar and land-based wind projects by multiplying the result discussed in the preceding paragraph by metrics for interest rates during construction realized on a construction loan over a 24-month term, and interest on 5-year term loans.<sup>68</sup> The Affidavit proposes to use the annual Effective Federal Funds Rate as a proxy to capture interest rate effects.<sup>69</sup>

Table 4 below reproduces an estimate provided in the PA Affidavit of the increased RECs prices in percentage terms associated with each of the NYSERDA solicitations at issue in the ACENY Petition (2016-2021) after application of the proposed adjustment formula for solar and land-based wind.<sup>70</sup> The Affidavit also provides an estimate of the rate impacts associated with the incremental increase in RECs prices as

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<sup>68</sup> Id., ¶65.

<sup>69</sup> Id.

<sup>70</sup> Id., ¶¶78-81, Table 17.

follows: “We calculate using the same methodology as utilized by Staff in the White Paper and determine that authorizing the Adjustment Mechanism would result in a 1.7% increase in consumer bills, all else equal.”<sup>71</sup>

**Table 4: Application of Proposed Formulae**

Solicitation	Solar REC Price Increase	Land-Based Wind Adjustment
RPS3257 (2016)	50%	N/A
RESRFP17-1	73%	71%
RESRFP18-1	62%	56%
RESRFP19-1	71%	54%
RESRFP20-1	71%	N/A
RESRFP21-1	43%	N/A

Sunrise Wind

Sunrise Wind is a 924 MW project that would be located 30 miles east of Long Island. It is being developed by Sunrise, a joint venture of Orsted and Eversource. NYSERDA received the bid for that project in response to its November 2018 solicitation and contracted with Sunrise in October 2019 for a strike price of \$110.37 over the 25-year life of the OREC Agreement. Because the contract is for Index ORECs, a reference energy price and reference capacity price would be subtracted from that strike price each month to arrive at the amount that would be paid for the environmental attributes associated with each MWh from the project. Sunrise’s petition (the Sunrise Petition) asks the Commission to direct NYSERDA to amend the project’s OREC Agreement by adding to it the inflation and interconnection adjustment mechanisms incorporated into NY3, NYSERDA’s third offshore wind solicitation.

The Sunrise Petition describes how a series of unanticipated and extraordinary economic events have given rise

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<sup>71</sup> Id., ¶81.

to inflation, supply chain disruptions, and interest rate increases, and explains how these changes to the economic environment have, in combination with delays in the permitting and interconnection processes, affected the Sunrise Wind project. The Petition notes that, after the execution of the project's OREC agreement, U.S. and global inflation rates rose from the 2% level assumed in the Phase 1 RFP to 4.7% in 2021 and 8% in 2022.<sup>72</sup> The Petition also identifies how unexpectedly rapid growth in the global offshore wind market, due in large part to Europe's response to the war in Ukraine, has created supply chain bottlenecks and driven prices of turbine components and various other capital and operational project inputs higher.<sup>73</sup> The Petition also highlights two sources of delay and added project costs. One was a series of decisions by BOEM between August 2019 and March 2021 that it says amounted to a "moratorium" on offshore wind development in the Northeast, imposition of which prevented the project from taking advantage of planned synergies with neighboring projects and also exposed the project to the disruptions mentioned above to a greater degree than would have occurred otherwise.<sup>74</sup> The other source of significant added cost identified in the Petition relates to the NYISO's interconnection process. Specifically, the Petition claims that Sunrise incorporated \$22 million into its bid price as an estimate of interconnection and transmission upgrade costs; however, "the cost to interconnect the Project will be approximately \$115 million - an increase of \$93 million."<sup>75</sup>

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<sup>72</sup> Sunrise Petition, p. 20.

<sup>73</sup> Id., p. 23.

<sup>74</sup> Id., pp. 25-26, 31.

<sup>75</sup> Id., p. 32.

The Sunrise Petition states that Sunrise Wind has taken a number of actions to mitigate the negative effects of these events and changes. Specifically, Sunrise has shifted from High-Voltage Alternating Current (HVAC) to High-Voltage Direct Current (HVDC) transmission technology and larger turbines in its project design, contracted for a U.S.-built wind turbine installation vessel, and advocated for an increase in the Federal Investment Tax Credit for offshore wind projects.<sup>76</sup> Nevertheless, according to the Petition, the project's capital budget has increased significantly between the time of the September 10, 2019 Phase 1 RFP submission deadline and the filing of the Petition.<sup>77</sup>

The Sunrise Petition indicates that, to date, Sunrise has already spent significant funds toward project development and the directors of the Sunrise joint venture will authorize investment of the remaining funds only upon a showing that returns will exceed Orsted and Eversource's weighted average cost of capital (WACC) by an adequate margin. The Petition avers that, because the project's present financial condition results in an IRR significantly below the company's WACC, Sunrise Wind would not presently be able to obtain a positive Financial Investment Decision (FID) from the directors to move to the construction phase of project development.<sup>78</sup>

The Sunrise Petition presents four primary reasons that the Commission should direct NYSERDA to incorporate the inflation and interconnection adjustment provisions of NYSERDA's third solicitation into its OREC Agreement and thereby boost the strike price. First, it states that project developers were

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<sup>76</sup> Id., pp. 26-28.

<sup>77</sup> Id., pp. 29.

<sup>78</sup> Id., pp. 34-36.



blind-sided by “a confluence” of unforeseeable events beyond their control, and the effects of those events “significantly increased costs for the offshore wind industry generally and the [Sunrise] project in particular,” and cannot be fully mitigated.<sup>79</sup> The Petition states that, as a result, the project’s financial profile has worsened markedly – so much so that it is now not a viable investment.<sup>80</sup>

Second, the Sunrise Petition argues the project could be completed on time if the requested adjustments were made and would yield significant benefits to New York, both by reducing greenhouse gas emissions and local emissions from the highly constrained downstate segment of the electric grid, and by “help[ing] pave the way for establishing statewide and regional supply chains and thereby reduc[ing] development risks for all subsequent offshore wind farms.”<sup>81</sup> Third, the Petition asserts that the project, even after amendment of the OREC Agreement, would “likely ... remain the least expensive option for New York State to procure 924 MW of offshore wind and all the attendant public benefits.”<sup>82</sup> That is, Sunrise contends, cancelling the OREC Agreement and authorizing it to rebid in a future solicitation would result in significant delay and likely a higher OREC strike price for an offshore wind project of comparable size than what would follow from granting the requested relief. Fourth, the Petition argues that granting that relief “would also be transparent and fair” because it

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<sup>79</sup> Id., pp. 18-29, 34-36.

<sup>80</sup> Id., pp. 29-30.

<sup>81</sup> Id., pp. 14-16.

<sup>82</sup> Id., pp. 41-42.

"would be based on objective formulas and would only come to pass in the event Sunrise Wind constructs the project."<sup>83</sup>

Empire and Beacon Wind

The petition filed by Empire/Beacon (the Empire/Beacon Petition) pertains to three projects: Empire Wind 1 and 2, and Beacon Wind.<sup>84</sup> The first two are being developed by Empire Offshore Wind LLC, the latter by Beacon Wind LLC; both LLCs are jointly owned by Equinor ASA and bp plc. The planned nameplate capacities of Empire Wind 1 and 2 are 816 and 1,260 MW, respectively. The projects would be located in a single wind energy area leased by the BOEM and located approximately 14 miles south of Long Island. Empire Wind 1 is to be connected to shore by a 230 kilovolt (kV) alternating current (AC) transmission system that would land at a substation at the South Brooklyn Marine Terminal and interconnect at the Gowanus Substation in New York City. Empire Wind 1 filed its siting application under PSL Article VII on June 20, 2021.<sup>85</sup> Empire Wind 2 is to be connected to shore by a 345 kV AC transmission line, landing at a substation in Oceanside, New York, and would interconnect at a new substation to be constructed near the Barrett Substation in western Long Island. Empire Wind 2 filed

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<sup>83</sup> Id., p. 46.

<sup>84</sup> Beacon Wind is slated to be the first phase of two, but as the second phase has not been awarded an OREC Agreement, this order will refer to the first phase as simply Beacon Wind.

<sup>85</sup> Empire/Beacon Petition, p. 5 (citing Case 21-T-0366, Application of Empire Offshore Wind LLC for a Certificate of Env'tl. Compatibility and Pub. Need for the Constr. of Approximately 17.5 Miles of Transmission Lines from the Boundary of N.Y.S. Territorial Waters to a Point of Interconnection in Brooklyn, Kings Cnty.).

its Article VII application on June 17, 2022.<sup>86</sup> The Empire/Beacon Petition specifies that Empire Wind 1 and 2 are proceeding as a single project through the BOEM permitting process, with the expectation that BOEM will issue a single COP for both projects in or around January 2024.<sup>87</sup>

Beacon Wind has a nameplate capacity of 1,230 MW, and is to be located 60 miles east of Montauk Point and interconnected by a 200-mile, 320 kV HVDC transmission line to a substation in Astoria, Queens, New York. The onshore substation to be sited in Astoria was previously occupied by a simple cycle peaking facility owned by Astoria Gas Turbine Power LLC, which is currently being decommissioned. Beacon Wind filed its Article VII application on May 13, 2022.<sup>88</sup> The Empire/Beacon Petition states that Beacon Wind expects final federal approvals to be issued in 2025.<sup>89</sup>

Empire Wind 1 submitted its bid in February 2019 in response to NYSEERDA's first offshore wind solicitation and contracted in October 2019 for a strike price of \$118.38 over a

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<sup>86</sup> Id., p. 7 (citing Case 22-T-0346, Application of Empire Offshore Wind LLC for a Certificate of Env'tl. Compatibility and Pub. Need for the Constr. of Approximately 12 Miles of Transmission Lines from the Boundary of N.Y.S. Territorial Waters to a Point of Interconnection in the Town of Hempstead, Nassau Cnty.).

<sup>87</sup> Id., p. 5.

<sup>88</sup> Id., p. 8 (citing Case 22-T-0294, Application of Beacon Wind LLC for a Certificate of Env'tl. Compatibility and Pub. Need for the Constr. of Transmission Infrastructure from the Boundary of N.Y.S. Territorial Waters to a Point of Interconnection at the Astoria Power Complex in Queens).

<sup>89</sup> Empire/Beacon Petition, pp. 8-9.

25-year term.<sup>90</sup> Empire Wind 2 and Beacon Wind submitted bids in October 2020 in response to NYSERDA's second offshore wind solicitation and signed OREC Agreements for those projects in January 2022 for strike prices of \$107.50 and \$118.00, respectively.<sup>91</sup>

The Empire/Beacon Petition asks the Commission to authorize NYSERDA to amend the three projects' OREC Agreements in somewhat different ways. For Empire Wind 1 and 2, Empire/Beacon asks that the period for adjustment would run from the solicitation submission deadline associated with each project to the date of the Petition.<sup>92</sup> For Beacon Wind, it asks for an adjustment period from the proposal date to the date of COP approval. The Petition seeks to have the NY3 interconnection cost sharing formula applied to all projects, with NYSERDA's share of any net savings or cost increases above the Interconnection Cost Allocation Baseline set at 80%. It also asks for a five-year extension to the term of the Empire Wind 1, making its duration 30 years instead of 25. And it seeks further relief for Empire Wind 2 and Beacon Wind in the form of a 1% annual price escalator during the contract term - about half of the expected level of change to the consumer price index.<sup>93</sup>

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<sup>90</sup> Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement by and between NYSERDA and Equinor Wind US LLC (October 23, 2019), assigned to Empire in 2021. Levelized over the 25-year contract term, the Year 1 strike price is \$99.08/MWh with a 2% annual escalator.

<sup>91</sup> Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement by and between NYSERDA and Empire Offshore Wind LLC (January 14, 2022) and Offshore Wind Renewable Energy Certificate Purchase and Sale Agreement by and between NYSERDA and Beacon Wind LLC (January 14, 2022).

<sup>92</sup> Empire/Beacon Petition, Exhibit A, p. 2.

<sup>93</sup> Empire/Beacon Petition, pp. 3-4, 5-6, 43-44.

The Empire/Beacon Petition describes how the Covid-19 pandemic and war in Ukraine have resulted in inflation, supply chain bottlenecks, and interest rate increases, and asserts that these “unforeseeable economic forces” have interacted with cost-increasing interconnection and permitting delays to adversely affect the development efforts and “financial attractiveness” of each of the companies projects.<sup>94</sup> The Petition identifies causal connections between inflation, reflected in several price indexes, supply chain bottlenecks, and higher costs of, for instance, wind turbine generators, offshore substations, and HVDC cables, as well as insurance, vessel costs, and other operational costs.<sup>95</sup> The Petition claims that the projects’ financial profiles have been degraded by interest rates, which have risen as central banks around the world have responded to economywide inflation. The Petition also argues that these costs, which ballooned due to unforeseen causes, are likely to continue rising, albeit more slowly, as a result of supply being insufficient to meet demand from the multiple jurisdictions that have made political and economic commitments to develop offshore wind resources over the coming years.<sup>96</sup>

In addition to economic forces, the Empire/Beacon Petition describes how challenges related to permitting and grid interconnection have contributed to the projects’ financial status. Specifically, the Petition states that all three projects lacked adequate pre-bid information about the suitability and availability of land-side interconnection facilities. The Petition explains that bids Empire/Beacon submitted to NYSERDA prior to initiation of the NYISO’s

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<sup>94</sup> Id., p. 9.

<sup>95</sup> Id., pp. 11-15, 17-21.

<sup>96</sup> Id., pp. 21-24, and App. C (Wood Mackenzie report).

interconnection process reflected analysis conducted using publicly accessible information, and that progress through the NYISO process revealed meaningful constraints for each project. According to the Petition, discovery of those constraints led to delay or abandonment of first-choice points of interconnection related to all three projects.<sup>97</sup>

The Empire/Beacon Petition highlights that Empire Wind 1 and 2 were planned as two phases of a unified project development, where the second phase would take advantage of synergies available from consolidated procurements and continuous construction efforts. The Petition asserts, however, that delays in obtaining interconnection services for Empire Wind 2 have prevented the projects from capturing these efficiencies and cost savings.<sup>98</sup> In particular, the Petition argues, because offshore equipment fatigues at a much faster rate if it is installed but not energized, Empire Wind 2's delayed interconnection required a delay in its development, thereby splitting the development into two separate projects and a loss of expected synergies.<sup>99</sup>

The Empire/Beacon Petition presents six primary reasons that the Commission should direct NYSERDA to adjust the three projects' OREC Agreements. First, it states that "numerous exogenous factors, including rampant inflation, global supply chain disruptions and soaring interest rates associated with the Covid-19 pandemic, the Russia-Ukraine conflict and the increasing pace of the energy transition," have resulted in "adverse economic impacts," which have in turn "imposed unprecedented and escalating cost increases" on all three

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<sup>97</sup> Id., p. 27.

<sup>98</sup> Id.

<sup>99</sup> Id.

projects.<sup>100</sup> Second, it states that the projects were exposed to these effects and to further cost increases by “the protracted duration of permit proceedings and the interconnection process.”<sup>101</sup> Third, the Petition states that these adverse factors in combination have reduced financial returns on the projects to “far below” the level at which they could attract the investment capital they need to move ahead.<sup>102</sup> Fourth, the Petition states that various significant cost containment measures cannot offset this financial effect.<sup>103</sup> Fifth, the Petition argues that granting the requested relief would result in the projects’ timely completion and progress toward the 70 by 2030 Target. Sixth, the Petition argues that granting relief would yield savings for ratepayers both by putting downward pressure on wholesale electricity market prices and because the costs of developing offshore wind resources on the East Coast are expected to continue increasing through 2030.<sup>104</sup>

#### NOTICES OF PROPOSED RULEMAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), Notices of Proposed Rule Making were published in the State Register on June 28, 2023, with respect to the Sunrise Petition [SAPA No. 15-E-0302SP57], the Empire/Beacon Petition [SAPA No. 15-E-0302SP58], and the ACENY Petition [SAPA No. 15-E-0302SP59] (collectively, SAPA Notices). The time for submission of comments on the SAPA Notices expired on August 28,

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<sup>100</sup> Id., pp. 2, 10-23.

<sup>101</sup> Id., pp. 9, 25-31.

<sup>102</sup> Id., p. 10.

<sup>103</sup> Id., pp. 23-25.

<sup>104</sup> Id., pp. 31-35, App’xs B & C.

2023. The comments received in response to the notices are summarized in the Appendix to this Order and discussed below.

LEGAL AUTHORITY

The Commission has significant authority to ensure that electricity supplied to electric ratepayers is safe and reliable and provided in a way that both is just and reasonable and appropriately addresses environmental externalities. The most important of these core principles is incorporated into PSL §65(1), which charges the Commission with the obligation to ensure that "every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." Similarly broad is PSL §5(1), which provides that the Commission's "jurisdiction, supervision, powers and duties" extends to the "manufacture, conveying, transportation, sale or distribution of ... electricity."

Several provisions of the PSL require the Commission to consider the public health and environmental impacts of the resources that provide energy supply to customers. For example, PSL §5(2) requires the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carryout long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources." PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying ... electricity ... and have power to order such reasonable improvements as well as promote the public



interest, preserve the public health and protect those using such gas or electricity.”

PSL §4(1) reiterates that the Commission possesses “all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]” including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates,<sup>105</sup> environmental stewardship, and the conservation of resources.<sup>106</sup> The Commission also has authority to prescribe the “safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public” whenever the Commission determines that the utility’s existing equipment is “unsafe, inefficient or inadequate.”<sup>107</sup> In addition to the PSL, the New York State Energy Law §6-104(5) (b) requires that “[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update.”

#### DISCUSSION

The basic question in this case is the same one that guides most Commission decisions: whether granting the requested relief would support the provision of safe and adequate service

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<sup>105</sup> See Int’l R.R. Co. v. Pub. Serv. Comm’n, 264 A.D. 506, 510 (1942).

<sup>106</sup> See Consolidated Edison Co. v. Pub. Serv. Comm’n, 47 N.Y.2d 94 (1979) (describing the broad delegation of authority to the Commission and the legislature’s unqualified recognition of the importance of environmental stewardship and resource conservation), reversed on other grounds, 447 U.S. 530 (1980).

<sup>107</sup> PSL §66(5).

at just and reasonable rates. Further, as the Petitioners and several commenters remind us, in answering this question, the Commission also considers the CLCPA's 70 by 2030, 9 GW of offshore wind by 2035, and Zero Emissions by 2040 Targets.

#### Legal Framework

The Commission's present approach to its PSL obligations reflects two important developments in law and policy since 1970. The first of these came with the legislature's adoption of PSL §5(2), which reoriented the Commission's role from one of passively receiving and assessing utilities' plans and proposals to one that entails actively "encourage[ing] all persons and corporations subject to its jurisdiction to formulate and carryout long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources."<sup>108</sup> The Commission has referred to this statutory provision in cases

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<sup>108</sup> See also Matter of Energy Ass'n v. Pub. Serv. Comm'n, 169 Misc.2d 924, 929 (N.Y. Sup. Ct. 1996) ("Section 5(2) ... transform[ed] the traditional role of the Commission from that of an instrument for a simple case-by-case consideration of rates requested by utilities to one charged with the duty of long-range planning for the public benefit.").

dealing with, among other things, energy conservation,<sup>109</sup> the RPS program,<sup>110</sup> and adoption of the REV program.<sup>111</sup>

The second shift occurred in a series of steps taken by the Commission beginning in 1996,<sup>112</sup> which effectuated a departure from the State's longstanding model of vertically integrated utilities and cost-of-service regulation to a restructured wholesale electric model that incorporates competition into the pursuit of compliance with PSL §65(1). The Commission did this through a suite of goals, including lower rates, greater customer choice, continued reliability of service, and addressing risks of energy sector market power.<sup>113</sup> In making this shift, the Commission recognized that a mechanism would be necessary to fund "public policy initiatives that are not expected to be adequately addressed by competitive markets," and established the System Benefits Charge to meet that need.<sup>114</sup>

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<sup>109</sup> Case 28223, Implementation of Conservation Programs, Opinion No. 84-15 (issued May 21, 1984), p. 539 ("Public Service Law affords us the requisite authority [to] 'stimulate' or 'foster' the development of conservation plans").

<sup>110</sup> Case 03-E-0188, supra, Order Instituting Proceeding (issued February 19, 2003), p. 2 ("we will institute a proceeding pursuant to, among other things, Public Service Law §§5(2) and 66(2) to develop and implement a renewable portfolio standard for electric energy retailed in New York State").

<sup>111</sup> Case 14-M-0101, supra, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015), p. 5 ("The Commission has the responsibility to adjust its regulatory framework in response to evolving circumstances and foreseeable trends, in order to meet customers' needs.").

<sup>112</sup> Case 94-E-0952, Competitive Opportunities Regarding Electric Service, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996) (Competitive Opportunities Order).

<sup>113</sup> Id., pp. 26-27.

<sup>114</sup> Id., p. 61.

These steps were taken in parallel to similar reforms initiated by the Federal Energy Regulatory Commission (FERC), which shifted from an entirely administrative approach to bulk power system regulation to one that makes greater use of competition among generators, transmission utilities, and others. FERC's adoption of Order 888 in 1996 laid the groundwork for the model now employed in New York and elsewhere, in which wholesale electricity prices are established in competitive wholesale markets, and an independent entity, such as the NYISO, administers auctions for energy, capacity, and ancillary services, and manages generator dispatch.<sup>115</sup>

Conforming State policy to the change in federal policy, the Commission oversaw New York's utilities divestiture of their generation assets and the establishment of the NYISO's competitive wholesale markets to secure the energy and services needed from independent generation providers.<sup>116</sup> The Commission explained in taking these measures that the new paradigm would improve upon the traditional, vertically integrated cost of service model with respect to both identifying needs and matching supply to those needs cost effectively.<sup>117</sup>

The Commission's preference for leveraging market forces also influenced its approach to achieving public policy objectives. Since implementation of the RPS program in 2004, the Commission has consistently held to the view that ratepayers are best protected by subjecting LSRs to competitive mechanisms. For example, in establishing the RPS, the Commission noted that "an important objective of the RPS program is to stimulate and complement voluntary/competitive renewable energy sales and

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<sup>115</sup> FERC Order 888, 75 FERC ¶61,080 (April 24, 1996), pp. 60, 279-86.

<sup>116</sup> Competitive Opportunities Order, pp. 64-65, 96-100.

<sup>117</sup> Id., pp. 54-55.

purchases (or 'green markets') so that these competitive markets ... sustain renewable activity after the RPS program ends."<sup>118</sup> The Commission thus considered a solicitation methodology based on "Competitive Neutrality," which we described as ensuring that the RPS is "compatible with competition in energy markets in New York State."<sup>119</sup> It was this basic economic tenet that underpinned our adoption of "a central procurement model, administered by NYSERDA" and including the entry into "long-term contracts" for RECs, which the Commission characterized as key for renewable energy developers "to obtain [project] financing."<sup>120</sup> The Commission repeatedly reiterated the competitive nature of the RPS program in several subsequent orders.<sup>121</sup> Further, in a 2010 order, it rejected a request to adjust the price component of a contract that incentivized electricity generation using biomass on the grounds that such an adjustment would "undermine the competitive process established for the [RPS] program."<sup>122</sup>

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<sup>118</sup> RPS Order, p. 4.

<sup>119</sup> Id., p. 24.

<sup>120</sup> Id., p. 51.

<sup>121</sup> See, e.g., Case 03-E-0188, supra, Order Establishing New RPS Goal & Resolving Main Tier Issues (issued January 8, 2010), p. 22 (in increasing the renewables goal to 30% by 2015, the Commission stated that "central procurement model provides efficiencies and is the most cost effective approach to administering the RPS program"); Case 03-E-0188, supra, Order Authorizing Modifications to the Main Tier Solicitation Contract Term (issued July 2, 2014), p. 13 (authorizing NYSERDA to enter into contracts with 20-year terms in response to market conditions, suggesting "a business-as-usual solicitation would not be sufficiently competitive").

<sup>122</sup> Case 03-E-0188, supra, Order Denying Request to Adjust Contract Price (issued November 19, 2010), p. 2.

The Commission maintained the competitive approach to LSR solicitations under the CES construct.<sup>123</sup> For example, in the CES Order, the Commission examined several options with respect to long-term procurements pursuant to an analysis framework "driven by the Commission's fundamental responsibility to consumers to achieve the [50 by 2030] goal at a reasonable cost."<sup>124</sup> Thus, in rejecting an option that would have directed utilities to enter long-term power purchase agreements for LSRs, the Commission found that such an option "would present a significant financial risk to ratepayers and to utilities."<sup>125</sup> Similarly, the Commission rejected the option of utility-owned generation because it "has the potential to inhibit entry by other market participants, which can result in less competition and higher costs in the long-run."<sup>126</sup> The Commission thus held that, consistent with the RPS program, "[l]ong-term procurement will begin by employing the current method of Fixed-Price REC contracts."<sup>127</sup>

The Commission's decision to authorize NYSERDA to include an Index RECs bidding option under CES Tier 1 was also based on reducing costs to ratepayers because they would "likely reflect[] a meaningful reduction in risk premium relative to the Fixed-Price REC as a result of the wholesale market revenue hedging that occurs using this method" and thus, "an Index REC

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<sup>123</sup> The incentive provided in the RPS program - competitively procured by NYSERDA - was on top of the revenues that renewable generators were expected to earn in the wholesale markets for electricity, capacity, and ancillary services.

<sup>124</sup> CES Order, p. 99.

<sup>125</sup> Id.

<sup>126</sup> Id., p. 100.

<sup>127</sup> Id., p. 101.

structure could deliver significant cost benefits to ratepayers.”<sup>128</sup>

In issuing the OSW Order in 2018, the Commission affirmed that New York was taking another major step toward “establishing a clean energy future that is secure, reliable, and cost-effective,” determined “that a series of actions related to offshore wind are necessary to help achieve the CES goal, as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030 in a fair and cost-effective manner,” and thus stated a reliance on “competition among market participants [to] be an effective and important way to reduce costs.”<sup>129</sup> Through the same order, the Commission modified the approach to renewable procurements to address the limitations of using Fixed-Price REC contracts.<sup>130</sup> The Commission directed NYSERDA to use a hybrid procurement model for offshore wind in which the developer was to provide both a Fixed-Price OREC bid, similar to a Tier 1 Fixed-Price REC, and a variable-priced OREC bid based on the Index REC approach.<sup>131</sup> NYSERDA selected the Index OREC bids in its 2018 offshore wind procurement and concluded that the solicitation resulted in a competitive process.<sup>132</sup> In 2020, the Commission reaffirmed the use of Index ORECs in offshore wind procurements and required bidders in future solicitations to submit either a Fixed-Price OREC or an

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<sup>128</sup> January 2020 Order, p. 14.

<sup>129</sup> OSW Order, pp. 5, 54.

<sup>130</sup> Id., pp. 38-39.

<sup>131</sup> Id., pp. 39-40.

<sup>132</sup> Case 18-E-0071, NYSERDA’s Launching New York’s Offshore Wind Industry: Phase 1 Report (filed October 23, 2019).

Index OREC bid.<sup>133</sup> Also in 2020, the Commission directed NYSERDA to include an additional option for bidders to offer an Index REC price in future Tier 1 solicitations, beginning with the 2020 solicitation.<sup>134</sup> Finally, the Commission authorized NYSERDA to offer Tier 1 projects the option to convert their Fixed-Price REC to an Index REC price approach based on NYSERDA's "compelling showing that substantial cost savings will likely result if the Index REC is introduced as an option for the 65 eligible renewable energy projects now under Fixed-Price REC contracts."<sup>135</sup>

The competitive approach to incentivizing the development of renewable energy is also embodied in the contracts executed by the Petitioners and NYSERDA, and the solicitations to which the Petitioners initially responded with bids, in conformance with the Commission orders discussed above. These sources of authority do not permit NYSERDA to amend the material pricing terms of the competitively awarded contracts at issue unilaterally; doing so would mean altering one of the fundamental terms of procurement set forth in Commission orders, which authority is reserved to the Commission. In this regard, NYSERDA's guidelines issued with respect to its 2020 offshore wind solicitation specified that "[c]ompetitive procurement

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<sup>133</sup> Case 18-E-0071, Order Authorizing Offshore Wind Solicitation in 2020 (issued April 23, 2020) (Offshore Wind Expansion Order)

<sup>134</sup> Case 15-E-0302, Order Modifying Tier 1 Renewable Procurements (issued January 16, 2020), p. 28.

<sup>135</sup> November 2020 Order, pp. 10-11.



rules and the OSW Order limit NYSERDA's ability to alter the terms of the Agreement."<sup>136</sup>

In sum, for the past 19 years, competition has been a cornerstone of Commission policy for controlling the costs associated with supporting renewable generation, resting on the premise that bringing competition to bear on investment, procurement, and operational decisions in the power sector will yield cost-effective outcomes for ratepayers, in part by allocating risk to generation project developers and operators. The Petitions seek relief inconsistent with the Commission's longstanding approach, insofar as they propose to arrive at a strike price through an administrative determination rather than a competitive bidding process. Several commenters, including Multiple Intervenors, the Municipal Electric Utilities Association of New York State, the Joint Utilities, and Nucor Steel Auburn, Inc., highlight this point.

We recognize that PSL §66-p(2) adds the pursuit of the 70 by 2030 and Zero Emissions by 2040 Targets to the Commission's obligations but do not read the provisions of the more recent statute as superseding the Commission's longstanding mandate to ensure that rates are just and reasonable. There is no indication in the statutory language or history that the legislature intended such a result, which could have the undesirable effect of driving ratepayer costs so high as to put the entire program at risk. To the contrary, the legislature provided the Commission with significant discretion under PSL §66-p(2) regarding how to establish the program to implement the 70 by 2030 and Zero Emissions by 2040 Targets by authorizing the

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<sup>136</sup> See, e.g., Purchase of Offshore Wind Renewable Energy Certificates: Request for Proposals ORECRFP20-1, found at <https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pt000000OPfCVEA1>, §6.6.

Commission to "address impacts of the program on safe and adequate electric service in the state under reasonably foreseeable conditions," as well as to "modify the obligations of jurisdictional load serving entities and/or the targets" based on consideration of such factors.

The Commission reads these provisions in a way that harmonizes their distinct priorities in service of the legislature's overall objectives. A sound interpretation of PSL §§65(1) and 66-p(2) therefore reads them together as directing the Commission to pursue renewable generation development targets without exceeding the bounds of a rate commitment that is just and reasonable and to pursue those targets with approaches designed to procure renewable resources as cost-effectively as possible.

#### Application of Legal Framework

Applying this interpretation of the relevant statutory framework, we find that the Petitions do not support departing from the Commission's years-long commitment to competitive procurements as the appropriate mechanism for soliciting RECs and ORECs. While we do not doubt that recent national and global events have affected electric generation developers, we are not confident that the relief proposed in the Petitions would adequately protect ratepayers. As explained below, granting the requested relief would result in significant rate impacts unsupported by the discipline of competitive solicitation without providing commensurate assurance that the projects at issue would be developed in a timely and cost-effective fashion.

First, in considering whether the proposed adjustments fall within the range of just and reasonable rates, we find that the ratepayer impacts of the requested relief are unjustly significant, especially as these adjustments would be arrived at

outside of NYSERDA's competitive solicitation process. In its comments, NYSERDA examined the potential effects of applying three different price adjustment formulas: (1) the various adjustment formulas proposed in the Petitions, as discussed above; (2) the adjustment formulas based on the PPI-based inflation adjustments that were included in the 2022 Tier 1 and NY3 offshore wind solicitations (applying a 75% and 80% coefficient, respectively), also discussed above; and (3) an alternate option where the formulas used in the 2022 Tier 1 and NY3 solicitations were revised to apply a 100% inflation adjustment coefficient.<sup>137</sup>

Table 5 below illustrates the estimated incremental bill impacts on residential and commercial/industrial customers for the least and most expensive of the three alternatives. Table 5 shows the bill impacts both in \$/month increases for typical customers as well as a percentage increase.<sup>138</sup> The percentage increases are based on estimated impacts, in nominal dollars, in 2030 as compared to typical bills from 2022. As shown in Table 5, relief is estimated to result in 2.3%-6.7% increases for residential customers and 2.5%-10.5% for commercial customers on total bills depending on service territory and the relief provided. On a percentage basis, customers in Consolidated Edison Company of New York, Inc.'s service territory would experience the lowest impacts since delivery rates in that territory are the highest and customers

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<sup>137</sup> NYSERDA Comments, pp. 31-42. The NY3 inflation adjustment formula includes a total weighting coefficient of 80% applied to the entire formula, and the 2022 Tier 1 inflation adjuster formula includes a 75% coefficient. Id., p. 36.

<sup>138</sup> Table 5 does not consider the rate impacts associated with the awards issued by NYSERDA with respect to the 2021 Tier 1 solicitation because none of those awards had resulted in contracts as of the time of the ACENY Petition.

in New York State Gas & Electric Corporation's service territory would experience the highest impacts since delivery rates in that territory are the lowest.

**Table 5: Estimated Incremental Monthly Bill Impacts  
(in Nominal Dollars in 2030)**

	<u>Residential</u> 600 kWh	<u>Commercial</u> 50 kW 2,600 kWh	<u>Industrial</u> 2,000 kW 720,000 kWh	<u>Industrial</u> 2,000 kW 1,296,000 kWh
<b>Least Cost Scenario</b>				
Net Impact of Granting Relief using Inflation Adjusters from NYSERDA's NY3 & 2022 Tier 1 Solicitations				
Statewide - \$0.948B/year \$0.00682/kWh				
\$/month Increase	\$4.09	\$85.94	\$4,910.76	\$8,839.37
% Increase Total Bill	2.3% - 4.4%	2.5% - 4.8%	3.0% - 6.1%	3.7% - 6.8%
<b>Highest Cost Scenario</b>				
Net Impact of Granting Relief as Requested				
Statewide - \$1.456B/year \$0.01047/kWh				
\$/month Increase	\$6.28	\$131.98	\$7,541.91	\$13,575.43
% Increase Total Bill	3.5% - 6.7%	3.8% - 7.4%	4.6% - 9.3%	5.6% - 10.5%

The Commission finds that the incremental rate increases associated with each of these options are costly, with the rate increases resulting from the Petitioners' proposed formulas the most costly of all. We emphasize, moreover, that the rate increases would not occur in a vacuum. As noted in the comments of the Public Utility Law Project (PULP), many households are already grappling "with soaring home energy costs due to commodity supply volatility in the international markets ... and feeling increased financial pressure when it comes to their electric and natural gas bills, which must be acknowledged and addressed."<sup>139</sup>

Second, we find that, unlike the competitive auction paradigm, the Petitioners' "one size fits all" formulaic price

<sup>139</sup> PULP Comments, p. 8.

increase approach risks overpaying for renewable energy and doing so in a way that unfairly advantages some developers over others. It does not account for the reality that the projects are very different from one another in multiple respects, are at widely divergent points in their development, and potentially face changed circumstances that would either raise or reduce a particular project's actual development costs. In effect, the Petitioners ask the Commission to ignore the specific factual circumstances of each individual project and grant formulaic relief that might result in various unacceptable outcomes, such as overpaying developers who have dodged the worst effects of inflation or granting relief to developers whose problems arose from their own delays or unrealistically low bid prices (rather than inflation). The bid information provided in Appendix C of NYSERDA's comments supports this point in part by illustrating the range of bids received in solicitations resulting from a diverse set of projects.

Another problem inherent in authorizing the amendment of the prices of existing contracts through a formulaic inflation adjustment is that it would arguably be unfair to losing bidders who may have appropriately considered the risk of inflation in their bids. As noted by the Joint Utilities, "[i]t is certainly possible - if not likely - that [losing] bidders more appropriately priced economic and business risks that the Petitioners claim were unforeseeable, which may have led to the properly constructed bids being assessed as too costly when compared to the bids that were ultimately selected."<sup>140</sup> Rise Light & Power, LLC (Rise) similarly asserts with respect to the Sunrise and Empire/Beacon Petitions that they constitute a "request to modify material terms of their competitively bid

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<sup>140</sup> Comments of Joint Utilities, p. 4.

contracts - an opportunity not afforded to other proposers who responded to OREC RFPs."<sup>141</sup> For its part, AES Clean Energy LLC (AES) - a renewables developer - asserts that, "[n]ot only would individual projects receive artificially high and uncompetitive pricing, but a blanket increase would also provide an unjust adjustment to multiple projects."<sup>142</sup>

The formulaic approach is also problematic because of the information asymmetry affecting the parties to the transactions. The Commission is at a significant disadvantage given project developers inevitably have much better knowledge of their costs, risks, and revenue sources than the Commission does. The competitive solicitation process addresses this problem by pitting developers against one another, which generally results in NYSERDA executing contracts with qualified developers at lower relative bid prices. A salutary result of this approach is that it relies on the bid prices alone to represent the economics of the projects, and does not require us to probe the risk profiles, profit expectations, and other project-driven factors underlying those bid prices. However, here, the Commission cannot look to a formulaic price adjustment as a method that reliably captures this mix of important information, and so cannot be confident that the strike prices resulting from the Petitions' proposed contract adjustments would be either fair to developers and ratepayers, or sufficient to ensure construction of the projects.

This observation leads to a third point. A significant ratepayer impact might be reasonable in the context of our CLCPA obligations if it were accompanied by greater certainty that the projects would timely achieve commercial

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<sup>141</sup> Comments of Rise, p. 9.

<sup>142</sup> Comments of AES, p. 12.

operation and begin contributing to the State's targets. In other words, a trade-off of higher cost for greater certainty might be justifiable. However, the formulaic approaches proposed in the Petitions and in comments do not necessarily substantially improve the likelihood that all the projects seeking relief would actually be completed within their respective timeframes. Given the variability in the projects noted above, we cannot be confident that any given proposed adjustment based on inflation would be sufficient to overcome the numerous challenges that can be fatal to a project. The formula may be too much or too little; in neither case does it serve ratepayers' interests.

A formulaic approach also does not distinguish developers who have committed resources to completing the projects from those who, to date, have made no real commitment, as illustrated by the fact that the developers of the 22 projects that received awards through the 2021 CES Tier 1 solicitation had not entered into binding contracts with NYSERDA on awards announced well over a year ago.<sup>143</sup> We further note that 26 of the projects subject to the ACENY Petition have yet to file permit applications with the relevant State and/or local agencies, and one of the projects had its permit application denied.

In addition, there is a risk that whichever formula were applied, many developers subject to the existing contracts would reject the proffered relief as insufficient and cancel their contracts. ACENY says as much in its reply comments, stating that under NYSERDA's proposed approach "the costs of any land-based renewable development project, including the Under Development Projects, would still so far surpass available

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<sup>143</sup> Comments of NYSERDA, p. 3.

revenues that their economics would remain unviable.”<sup>144</sup> As for the four offshore wind projects, each has asked for an adjustment far beyond what NYSERDA finds to be consistent with the inflation adjustment included under NY3, and it is unclear if the developers of those projects would accept contract amendments based on a retrospective application of the adjustment included in that solicitation.

All of this is meant to point out that the projects seeking relief are highly variable in their economics and development status, and the Commission cannot conclude that a formulaic approach to amending the contracts would be just and reasonable, particularly in the context of the expedited process demanded in the Petitions. In contrast, our competitive procurement policy is designed to produce prices that reflect the specific circumstances affecting the bidders. Given the variability among the projects, we have no confidence that the higher costs of the formulaic approach would guarantee ratepayers the benefits represented by the timely completion of the various projects. Thus, we conclude that imposing those increased costs would not be reasonable.

We are also mindful of our decision’s potential impact on future LSR procurements, and we agree with the several commenters that raise concerns associated with the integrity of NYSERDA’s competitive solicitation process. Granting an administrative adjustment here could lead to less competitive behavior on the part of future bidders. The Joint Utilities note in this respect that granting the relief requested would encourage “clean energy developers to discount the inherent economic and business risks that apply to development projects

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<sup>144</sup> ACENY Reply Comments, dated September 12, 2023, p. 20.



that use a market-based contracting model.”<sup>145</sup> This could result in sending “a signal to the market that developers should not price their bids to reflect the full set of risks that apply to their projects.”<sup>146</sup> AES similarly comments: “Allowing [an] adjustment mechanism is anti-competitive and counter to the principles that the Commission has rightfully established. If companies can seek price adjustments and absolve themselves of development and financial risk, they do not have [an] incentive to build projects efficiently.”<sup>147</sup>

These concerns also underlie our rejection of other potential forms of relief. For example, although noting its “concerns with the magnitude of the requests presented [in the Petitions] and their impact on energy affordability,” the City of New York offered in its comments an alternative “need-based” relief, whereby “each developer should be required to demonstrate the level of financial support it actually needs to restore its viability.”<sup>148</sup> However, the Petitions do not seek this form of relief and, in any event, a process by which some subset of the 90 contracts at issue in the Petitions could be administratively adjusted in an appropriate manner that maintains the integrity of the competitive solicitation process, particularly one that is fair to those developers that

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<sup>145</sup> Comments of Joint Utilities, p. 5.

<sup>146</sup> Id., p. 8.

<sup>147</sup> AES Comments, p. 18.

<sup>148</sup> Comment of the City of New York, pp. 1, 3. The Utility Intervention Unit (UIU) makes a similar point, noting that “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,” yet stating that, if a contract adjustment mechanism is provided as relief, it must be done in a way that “keep[s] the cost adjustment as low as possible.” UIU Comments, pp. 1, 3.

participated in prior NYSERDA solicitations but that did not receive awards, is inconceivable. Indeed, ACENY acknowledges in its reply comments that undertaking a case-by-case evaluation would "by definition be a fraught exercise."<sup>149</sup>

Accordingly, while the Commission acknowledges that unforeseen inflation and supply chain disruptions may have affected the economics of the projects subject to the Petitions, we do not believe that post-award renegotiation of increased price terms is an appropriate or sound remedy, whether based on the formulaic approaches proposed in the Petitions or the approaches suggested by NYSERDA. While recognition of inflationary pressures may be appropriate in the global economic environment we have entered, contractual arrangements that respond to such pressures are properly effectuated ex ante, and laid out in the terms of the solicitation and the award so as to allow all developers to structure their proposals accordingly and compete on a level playing field. The Commission is encouraged by the fact that NYSERDA has already introduced an inflation adjustment mechanism in its current solicitations, based on stakeholder recommendations.

The Commission recognizes the importance of achieving the CLCPA's 70 by 2030 and Zero Emission 2040 Targets but remains convinced that our longstanding policy favoring competitive solicitations remains the best approach to doing so in this case. We believe that the discipline of competition, which acts as a counter to the information asymmetry that the Commission cannot avoid, should guide us. We thus recommend that NYSERDA continue its effort to meet the 70 by 30 Target through subsequent Tier 1 and offshore wind solicitations, whether on an expedited basis or optimizing for market

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<sup>149</sup> ACENY Reply Comments, p. 25.

conditions.<sup>150</sup> This approach will allow developers, which are the parties with the best available information about what evolving market conditions mean for their projects, to revisit their pricing. Projects that request to cancel their contracts with NYSERDA and have contracts terminated by NYSERDA would presumably participate in future procurements, increasing their competitiveness. Additionally, we endorse NYSERDA's continued inclusion of an inflation adjustment and interconnection cost-sharing mechanism in its current and future offshore wind procurements, and inflation adjustment in its current and future Tier 1 solicitations, both of which should reduce the risk of project attrition.

We have also considered the important question of reliability raised by the Natural Resources Defense Council (NRDC) and the NYISO in their comments. For example, in supporting relief with respect to the Petitions, NRDC states that the "[n]ear-term reliability needs" identified in the NYISO's 2023 Quarter 2 Short-Term Assessment of Reliability report (STAR Report) "amplify the importance of clean energy resource capacity additions in the short term."<sup>151</sup> The STAR Report, in turn, states that, "[b]y 2033, additional large loads increase the demand by 1,224 MW which results in a corresponding deficient margin of 104 MW" and, further, "[i]f CHPE does not begin operation, the statewide system margin is projected to be

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<sup>150</sup> The plain language of the CLCPA provides until the end of 2030 to achieve the 70 by 2030 Target. See PSL §66-p(2)(a) (Commission shall establish program to require "a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty shall be generated by renewable energy systems") (emphasis added).

<sup>151</sup> NRDC's Comments, p. 4.

deficient for all years 2025 through 2033 when considering the additional large loads.”<sup>152</sup>

We take the findings of the NYISO’s STAR Report seriously and understand that reliability margins have been eroding as older, less efficient generators withdraw from the market and more stringent environmental standards are enacted. This trend poses a number of important challenges. However, the report does not justify a decision to authorize contract relief for the projects that are the subject of the Petitions. Rather, the NYISO’s forecast suggests that only the CHPE project is on a course of development that can address the near-term reliability need.<sup>153</sup> While additional renewable generation will have a role in addressing future reliability concerns, none of the projects at issue here would be in-service in time to displace CHPE and its contribution to reliability margins. In the meantime, the Commission will remain vigilant in ensuring system reliability.

Finally, we address the concerns expressed in several of the public comments that providing relief to ensure the completion of the projects subject to the Petitions is essential to achieve the CLCPA’s 70 by 2030 and Zero Emissions by 2040 Targets. For example, Sierra Club and Environmental Advocates NY (EANY) filed a joint comment, stating that the Commission’s

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<sup>152</sup> Star Report, found at <https://www.nyiso.com/documents/20142/16004172/2023-Q2-STAR-Report-Final.pdf/5671e9f7-e996-653a-6a0e-9e12d2e41740>, p. 7; see also NYISO’s Comments, pp. 3-4.

<sup>153</sup> NRDC acknowledges this point. See NRDC’s Comments, p. 5 (“transmission security margin is expected to improve in 2026 if the [CHPE] connection from Hydro Quebec to New York City enters service on schedule in spring 2026”). Alternatives to otherwise address the near-term reliability need include the local transmission owner soliciting and procuring solutions to the need or the NYISO delaying the deactivation of some existing simple-cycle combustion turbines (i.e., peaker plants). STAR Report, pp. 9, 11, 30 (citing 6 NYCRR Part 227-3.6 and applicable NYISO tariff provisions).

commitment to the 70 by 2030 Target must remain “steadfast” and an “inflation adjustment of the type requested by Petitioners should be strongly considered as part of a least-cost approach to achieving New York’s renewable energy commitments.”<sup>154</sup> The New York League of Conservation Voters (NYLCV) states, with respect to the projects subject to the ACE Petition, that “renewable energy construction must continue uninterrupted” in accordance with the relief requested in that petition.<sup>155</sup>

The Commission fully accepts its obligation to pursue the CLCPA targets and believes this order is consistent with that pursuit. Notably, the Commission did not consider the viability of the CHPE project in establishing the program to achieve the 70 by 2030 Target; yet that project is underway and is expected to provide 1,250 MW of clean energy to the system by the second quarter of 2026.<sup>156</sup> Additionally, since 2016, 24 renewable projects under contract with NYSERDA, representing 727 MW of capacity, began commercial operation, and 10 projects representing 607 MW of capacity are now under construction. Further, NYSERDA may elect to award at least 4,000 MW of renewables projects related to its 2022 Tier 1 and NY3 offshore wind solicitations, with many projects capable of contributing to the 70 by 2030 Target.

The Commission is also aware – not least because of the present experience with the Petitions – that OREC and REC contract awards alone are no guarantee that a project will be constructed and actually deliver megawatts to the power system. In our view, a responsible approach to CLCPA targets must recognize that many of the factors that impact energy project

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<sup>154</sup> Joint Comments of Sierra Club and EANY, pp. 1-2.

<sup>155</sup> NYLCV’s Comments, p. 3.

<sup>156</sup> Case 10-T-0139, supra, Env’tl. Mgmt. & Constr. Plan: Overland Segments 13, 14, and 15, dated September 2023.

development are entirely outside this Commission's control. In keeping with this recognition, we find that meeting CLCPA targets requires more than authorizing the award of contracts to generation developers until those targets are achieved. Rather, the Commission must consider the electric system as a whole and take the additional measures that are within our powers to steer cost-effective investment towards the initiatives that will help bring contracted projects on-line.

Multiple studies, including the Power Grid Study, have shown that significant upgrades to the existing transmission and distribution (T&D) system are necessary to achieve the State's clean energy targets.<sup>157</sup> In response, the Commission has issued a number of orders since enactment of the CLCPA to reconfigure the electric grid. For example, on February 16, 2023, the Commission issued an order approving 62 "Areas-of-Concern" transmission projects at an estimated cost of \$4.4 billion to unbottle local transmission constraints and reduce existing and expected curtailment of renewable generation in northern and western New York.<sup>158</sup> As explained in that order, "[t]his investment will maximize the public investment already made in renewable generation by increasing the amount of renewable energy that can be delivered and will also make the NYSERDA procurement program more competitive in the future, by largely eliminating curtailment risk premiums."<sup>159</sup>

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<sup>157</sup> Case 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act, Initial Report on the New York Power Grid Study, dated January 19, 2021.

<sup>158</sup> Case 20-E-0197, supra, Order Approving Phase 2 Areas of Concern Transmission Upgrades (issued February 16, 2023).

<sup>159</sup> Id., p. 43.

Other key investments include approval of the Smart Path Connect project - a bulk transmission project in Northern New York authorized through the New York Power Authority priority process.<sup>160</sup> The Commission also exercised its authority to refer the solicitation of new bulk transmission facilities through the NYISO's tariff, to enable the injection of 9 GW of energy from offshore wind and reduce offshore generation developers' risk.<sup>161</sup> Also relevant to achieving the CLCPA offshore wind target, we approved funding for a new interconnection hub in Con Edison's territory.<sup>162</sup> These efforts are laying the foundation for successful development and efficient operation of individual renewable projects; without the build-out of T&D system capacity they represent, the CLCPA targets would likely be impossible to reach at any level of expenditure. While generation projects may attrit from the present contracted group as a result of this order, our ongoing efforts to identify and effectuate cost-effective transmission upgrades make future generation project attrition less likely and make future procurements more cost competitive.

In sum, while the Commission shares the concerns of commenters about the need for progress toward the CLCPA targets, we do not find that our CLCPA obligations require us to depart

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<sup>160</sup> Case 20-E-0197, supra, Order on Priority Transmission Projects (issued October 15, 2020).

<sup>161</sup> See Case 20-E-0497, et al., New York Independent System Operator, Inc.'s Proposed Public Policy Transmission Needs for Consideration for 2020, Order Addressing Public Policy Requirements for Transmission Planning Purposes (issued March 19, 2021); Case 22-E-0633, New York Independent System Operator, Inc. Proposed Public Policy Transmission Needs for Consideration for 2022, Order Addressing Public Policy Requirements for Transmission Planning Purposes (issued June 22, 2023).

<sup>162</sup> Case 20-E-0197, supra, Order Approving Cost Recovery For Clean Energy Hub (issued April 20, 2023).

from our longstanding approach to renewable resource procurement. Indeed, we conclude that such a departure risks either over- or under-compensating renewable generation developers, to the detriment of ratepayers, and would compromise the price integrity and equity derived from New York State's longstanding competitive procurement process. We believe this order fulfills the PSL's requirement that we keep rates just and reasonable, while also balancing our obligation to pursue the CLCLPA targets in the most cost-effective manner possible.

CONCLUSION

The Commission finds that competitive solicitations remain the best mechanism by which to meet its obligation to establish just and reasonable rates for renewable generation subsidies under PSL §65(1) on the path to meeting the renewable energy targets of the CLCPA. The relief sought here is not consistent with our well-established competitive paradigm for selecting cost-effective and viable renewable projects. For this reason and those discussed in the body of this Order, the Commission denies the Petitions.

The Commission orders:

1. The petitions filed by Alliance for Clean Energy New York, Sunrise Wind LLC, and Empire Offshore Wind LLC and Beacon Wind LLC are denied.
2. These proceedings are continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary



Summary of Comments on the Inflation Adjustment Petitions

This summary of comments is compiled for the benefit of the reader and is not intended to reflect any weight given particular comments by the Public Service Commission (Commission) or the Department of Public Service (Department). The full versions of all comments can be found at the Department of Public Service website under Case No. 15-E-0302 and Case No. 18-E-0071. Staff and the Commission have considered the comments in their entirety. Of note, several of the public comments addressed a petition seeking contract relief filed on June 14, 2023, by Clean Path New York LLC (CPNY). Although the order here does not address the CPNY petition, the comments related to that petition are summarized here because they are generally incorporated into comments that also addressed the ACENY, Sunrise, and Empire/Beacon Petitions.

Entities that Commented on the Inflation Adjustment Petitions

AES Clean Energy  
Alliance for Clean Energy New York, Inc.  
Brooklyn Chamber of Commerce  
Building and Trades Council of Nassau and Suffolk Counties  
Business Network for Offshore Wind  
City of New York  
Crawford & Associates Engineering & Land Surveying P.C.  
Elected Officials to Protect America  
Epsilon Associates, Inc.  
Herkimer County Chamber of Commerce  
International Brotherhood of Electrical Workers (IBEW)  
International Union of Operating Engineers Local 158  
Joint Utilities (Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange & Rockland Utilities, Inc. and Rochester Gas and Electric Corporation)  
Multiple Intervenors and the Municipal Electric Utilities Association of New York State

Natural Resources Defense Council  
New York Battery and Energy Storage Technology Consortium (NY-BEST)  
New York Independent System Operator, Inc.  
New York League of Conservation Voters  
New York Offshore Wind Alliance  
New York State AFL-CIO  
New York State Economic Development Council  
New York State Energy Research and Development Authority (NYSERDA)  
New Yorkers for Clean Power  
Nucor Steel Auburn, Inc.  
Port of Albany and Marmen Welcon  
Public Utility Law Project of New York, Inc.  
Rise Light & Power  
Sierra Club and Environmental Advocates NY  
Solar Energy Industries Association (SEIA)  
Southwest Brooklyn Industrial Development Corporation (SBIDC)  
Swan Contracting LLC  
The American Clean Power Association  
The New York State Laborers'  
The Wesson Group  
Town of Hounsfield  
Utility Intervention Unit, Division of Consumer Protection, Department of State  
Utility Workers Union of America (UWUA) Local 1-2  
Wind Works Long Island and Labor Partners  
Wyoming County Industrial Development Agency

AES Clean Energy (AES)

In its initial comments, AES advocates that the Commission deny the ACENY Petition because "it is detrimental to the goals of the CLCPA and against the interest of the ratepayers" and "conflates adverse market conditions with non-viable project bids, while ignoring favorable trends in market conditions." AES believes that "granting this price increase could set a negative precedent that encourages anti-competitive market bidding behavior in a competitive solicitation." AES recommends that non-viable projects should cancel their contracts and rebid in a future solicitation. AES acknowledges

that prices could increase but does not believe that prices would increase by as much as is requested in the ACENY Petition.

AES characterizes ACENY's premise that New York cannot meet the goals of the CLCPA without an inflation adjustment as "demonstrably false." AES states that prior Tier 1 solicitations only required minimal project de-risking due to lower minimum threshold requirements and that as a result, "projects were bid at strike prices lower than the cost to build in New York" and that these non-viable projects have "have been continuing to extend their contracts and have not suffered any significant financial penalties" due to NYSEDA's relatively low contract security amounts. AES further describes regulatory barriers related to permitting and interconnection, and a shortage of EPC firms able to build at scale, as sources of project development delays.

AES presents a scenario assuming that "projects that are not ready-to-build before 2026 would have enough time to rebid with pricing that reflects the true costs to build their projects in a future NYSEDA solicitation" and states that under this scenario, contracted non-viable projects could be canceled and New York could still meet the 2030 CLCPA goal. AES further characterizes that based on publicly available information and given the IRA tax credits for energy communities and domestic content, 12 of the 40 large projects included in the ACENY Petition can move forward without the inflation adjustment and build pre-2026. AES estimates that "the total costs required to support the adjustment mechanism are understated in the Petition by several billion dollars" and states that the "adjustment mechanism does not provide certainty that these projects would be built even after receiving an adjustment nor does it confirm when they would be completed." AES states that the Phase 2

transmission upgrades are not dependent on the specific projects in the ACENY Petition. AES also states that the projects selected in the 2021 Tier 1 solicitation "should not be claiming the same lack of knowledge as the projects bid in years prior."

In its reply comments to ACENY's reply comments, AES reiterates its opposition to the ACENY Petition and recommends that the Commission deny the requested relief and direct NYSERDA to immediately commence a new solicitation. AES states that ACENY's adjustment mechanism is not the most effective way to meet CLCPA requirements at a more affordable cost to ratepayers, and that projects procured in future solicitations would have lower prices than the requested adjustments and be mature enough to meet CLCPA deadlines. AES also reiterates its position that the Phase 2 transmission upgrades "would not be impacted by the project rebid solution."

Alliance for Clean Energy New York, Inc.

In its reply comments, ACENY states that none of the comments in opposition to the relief requested in the ACENY Petition have offered evidence refuting ACENY's position that the adjustment mechanism is required to ensure ongoing renewable generation development continues apace to provide safe and adequate service at just and reasonable rates and meet CLCPA mandates. ACENY states that NYSERDA and the NYISO independently confirm ACENY's analysis and disputes MI/MEUA's assertion that the Petition being submitted by ACENY rather than the Tier 1 developers suggests that relief is not necessary and the Joint Utilities' assertion that other remedies are available to manage project costs. ACENY states that project development has not been unreasonably delayed by the developers, noting that developers face challenges related to "prolonged permitting

process and significant backlogs in the NYISO interconnection process." ACENY states that AES's suggestion that transmission upgrades can or should move ahead as planned absent the renewable generation projects in response to which they were designed has no merit.

With respect to proposals to rely on future solicitations to make up for any contracted projects that terminate their contracts, ACENY states that doing so will increase costs to consumers because the median prices of bids responding to the current solicitations are higher than in prior solicitations, as reported by NYSERDA. ACENY states that its consultant, PA Consulting Group (PA), concurs with IEC's conclusion that substantial and significant deflation would be needed for prices to return to pre-COVID levels.

With respect to alternative inflation adjustment mechanisms, ACENY states that "a broad, single index, metric cannot adequately restore economic viability to the Under Development Projects." ACENY provides a supplemental affidavit from PA to support this position.

With respect to claims that precedent will be set by adjusting the contracts for inflation, ACENY states that this will not be an issue if an adjustment is narrowly framed as responding to specific material and unforeseeable circumstances.

With respect to proposals to conduct project-by-project review, ACENY states that this would not be in alignment with NYSERDA's procurement process, which does not include an assessment of each project's underlying economics. ACENY also states that this would be a "fraught exercise" because of the number of developers involved. ACENY states that using an adjustment mechanism other than the one presented in the ACENY Petition would result in a much higher attrition rate. ACENY

states that all components of its proposed adjustment formulas and their associated weighting together are necessary to account for the impacts on contracted projects.

ACENY states that certain conditions proposed by commenters can support renewable development and could have merit if implemented properly, including requiring projects to execute a contract within a specified timeframe after NYSERDA provides an amended contract, requiring additional information in quarterly status reports, employing labor at prevailing wages, securing MWBE/SDVOB contractors (subject to availability), and adjusting minimum economic benefits. ACENY opposes other proposed conditions, including termination fees, higher contract security requirements, and sharing of federal support, but acknowledges that these provisions could be proposed in a Request For Information for market feedback prior to implementation. ACENY also suggests that NYSERDA further refine the inflation adjustment mechanism included in future solicitations.

#### Brooklyn Chamber of Commerce

The Brooklyn Chamber of Commerce supports the Beacon/Empire inflation adjustment petition, stating that the projects "are expected to enable thousands of jobs and billions in economic benefits," including investments at the South Brooklyn Marine Terminal and contract awards for maritime operations and vessel construction, with further investments to come. The Brooklyn Chamber of Commerce notes further that the projects "are on track to provide power to the state at a faster schedule and lower cost than other available offshore wind alternatives" but that they "could never have foreseen the material, labor, and construction costs they are now facing in

the wake of the Covid-19 pandemic and the war in Ukraine,” and, absent an inflation adjustment, “we risk losing the jobs, opportunities, and economic activity they stand to deliver.”

Building and Trades Council of Nassau and Suffolk Counties (BCTC)

BCTC supports the petitions filed by Empire/Beacon and Sunrise, stating that the “requests are justifiable and certainly reasonable in principle.” BCTC states that offshore wind progress must continue, because cancellation of a project “means rebidding and restarting a years-long permitting process that may result in different transmission footprints, economic commitments, and even contracts with other states, causing New York to lose an advantage it strove to secure through bold, early action,” potentially missing CLCPA mandates and incurring higher costs associated with re-bidding, based on current cost trends that suggest any project would be even more expensive if bid at a later date. BCTC states further that making an inflation adjustment provision available to the existing portfolio “would provide meaningful improvements in project viability to help ensure their completion and provide a more rational path than the costly and draconian option of restarting the projects altogether.”

Business Network for Offshore Wind (BNOW)

BNOW supports an inflation adjustment for offshore wind and “does not take a position on the specific mechanisms for adjusting the contracts or any of the petitioners’ statements relating to the mechanisms.” BNOW states that “it has become clear that, with the increase in material costs and the increase in the cost of financing, many offshore wind

developers are facing challenges in meeting their current power purchase agreements” and encourages the Commission to “do everything it can to foster greater certainty for offshore wind deployment in New York in order to help the state achieve its climate goals and to support the establishment of the local regional and domestic supply chain.” BNOW notes that the contracted projects are driving infrastructure investments that will also support future projects, including vessel construction, cable manufacturing, sub-component fabrication and port investments. BNOW notes further that “delaying and rebidding projects will negatively impact investor confidence in the marketplace” and will also delay avoided health impacts associated with displacing fossil fuel power plant emissions and other community benefits.

#### City of New York

The City of New York is sympathetic to the concerns raised by Empire/Beacon, Sunrise, ACENY and Clean Path New York in their respective Petitions, but has concerns with the magnitude of the requests and the associated impact on energy affordability. The City is also “very concerned about the implications of failing to provide any relief whatsoever” because of the need to achieve the CLCPA goals, which will contribute to local air quality improvements in New York City and meeting Local Law 97, among other benefits.

The City of New York states that the “generic approach advocated by ACE-NY is not appropriate as it has the potential to overcompensate some generators and does not take into account the different stages of development of each project” and that “each developer should be required to demonstrate the level of financial support it actually needs to restore its viability,”



subject to a cap on the amount of relief provided for any project. The City of New York expresses disappointment that "that no Tier 1 developer was willing to provide any concrete evidence that its costs have actually increased by the amounts set forth in the ACE-NY Petition" and that "ACE-NY offered only a generalized macro analysis of nationwide industry trends and made no attempt to provide data that is specific either to New York or to the Northeast region, or otherwise to demonstrate any linkage or nexus between the generalized industry trends and developers' actual experience in New York."

The City of New York recommends that the Commission provide targeted relief to the Tier 1 projects, which will reduce the rate impacts on customers while still fostering achievement of the 70 by 30 goal. The City of New York states that contract holders should be required to "provide financial and other information regarding the economic viability of its project and the amount needed to preserve or restore its economic viability" and an attestation as to the accuracy of the submitted information, with failure to comply serving as grounds to deny relief. The City of New York identifies project development stage, status of contracts for materials, equipment and/or construction, and the likelihood that the project will be completed as additional considerations in determining the appropriate amount of relief. The City of New York also identifies incremental requirements that should be imposed on projects that receive relief, including the provision of a development schedule that can be used to monitor progress and submission of a financial report following completion that shows how the incremental funding was used and indicate whether the strike price should be further adjusted to account for lower-than-expected costs. The City of New York notes that developers

of projects that have had contracts for several years and not made progress should not be rewarded with additional financial support. The City of New York proposes that a cap should be set on the relief received for any individual Tier 1 project to align the 20% planned attrition rate.

For Empire/Beacon and Sunrise, the City of New York proposes that adjustments for the offshore wind projects should be limited to encompass only those elements for which the Commission finds sufficient justification. The City of New York notes that Empire/Beacon and Sunrise are not offering any incremental or supplemental consideration in exchange for the requested relief. The City of New York proposes that "any upward adjustment mechanism should be paired with a claw back or downward adjustment provision that provides for sharing of savings should project economics change over the course of the term of the contracts." The City of New York recommends an 80/20 (ratepayer/developer) sharing ratio. Similar to Tier 1, the City of New York proposes that the offshore wind projects be required to file financial reports after completion, and that relief should be limited such that there are no increases in profits. The City of New York takes the position that the extension of the contract term for Empire 1, the addition of an annual escalator to Empire 2 and Beacon, and the interconnection costs for all Empire/Beacon projects should be denied.

For CPNY, the City of New York takes the position that generation component of the project should be granted the same relief as the Tier 1 projects. The City of New York "urges the Commission to avoid an outcome in this matter that undermines Tier 4 or otherwise disincentivizes developers from committing their upstate wind and solar projects to be part of CPNY's Selected Project." The City of New York proposes that the

adjustment to the strike price for CPNY should be calculated based on a weighted contribution of the component Tier 1 projects.

Crawford & Associates Engineering & Land Surveying P.C. (C&A)

C&A supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to meet the energy needs of New York consumers. C&A notes that if the projects don't reach construction, the financial impacts could limit developers' ability to finance other projects in the future. C&A states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. C&A states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

Elected Officials to Protect America

Elected Officials to Project America supports the ACENY Petition on the grounds that the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. Elected Officials to Project America states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. Elected Officials to Project America states

further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

Epsilon Associates, Inc.

Epsilon Associates supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. Epsilon Associates states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. Epsilon Associates states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

Herkimer County Chamber of Commerce

The Herkimer County Chamber of Commerce supports the contract adjustment put forth in the ACENY Petition for the projects being developed by Boralex, with specific reference to the Newport Solar Project, based on Boralex's reported "commitment to the community, willingness to adjust the project based on specific community concerns, and overall corporate stewardship" and "commitment to hiring local companies and workers for the construction phase of the project." Absent the requested relief, the Herkimer County Chamber of Commerce is concerned that "New York risks good developers like Boralex moving to other states," which would mean losing "millions of

dollars in PILOT payments and Host Community Benefits across the life of their projects” and “tens of millions of additional economic stimuli throughout construction and operation of Newport Solar and their full portfolio of New York projects.” The Herkimer County Chamber of Commerce states that it is crucial to grant relief to Boralex in order to “ensure the state meets its aggressive climate mandates on time” and to avoid “increased costs beyond the relief requested in the Petition” if developers re-bid their projects.

International Brotherhood of Electrical Workers (IBEW)

IBEW supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. IBEW notes that it is “working diligently to ensure an adequate number of trained workforce to complete the projects on schedule.” IBEW states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. IBEW states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in “both years of material delay and substantial additional cost.”

International Union of Operating Engineers (IUOE) Local 158

IUOE Local 158 supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host

communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. IUOE Local 158 states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. IUOE Local 158 states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

#### Joint Utilities

The Joint Utilities oppose the Petitions pending before the Commission on the grounds that Empire/Beacon, Sunrise, ACENY and CPNY are "sophisticated market participants with extensive experience in the development of renewable generation facilities and should have factored economic risks into their bid prices in the event of unforeseen circumstances." The Joint Utilities thus recommend that the Commission deny the relief sought in the Petitions and direct NYSERDA to conduct new procurements. The Joint Utilities note that "allowing post-solicitation changes to contract prices gives an unfair advantage to the winning bidder(s) that did not adequately factor in economic and market risks" and that granting the requested relief "would cause significant cost increases for customers and would set a damaging precedent for all future NYSERDA procurements." The Joint Utilities note that approval of the Petitions "would fundamentally change features of the CES procurements from a market-based pricing model to more of a cost-of-service based model without including the protections inherent in cost-of-service regulation."

The Joint Utilities state that conducting new procurements to replace any projects that cancel their contracts

due to financial hardship "would provide a fair opportunity for all developers and would prevent an incentive to bid based on an incomplete set of risk considerations." The Joint Utilities also state that "a new procurement cycle would present a fair opportunity for all developers to prepare competitive bids that reflect a comprehensive understanding of market conditions, properly manage associated business risks, and provide the greatest opportunity to secure clean generation resources cost-effectively." The Joint Utilities suggest that NYSERDA should be directed to "assess whether the scale of penalties in NYSERDA contracts is consistent with other states/regions" and, if necessary, to "increase the magnitude of contract termination provisions to motivate the preparation of bids that properly reflect the economic and business risks that developers face."

The Joint Utilities request that if relief is granted, it should be provided only upon a project-by-project examination of actual incurred costs by instituting "a process that modifies contracts based on the actual incurred commodity and component costs of each of the Petitioners' projects." The Joint Utilities state that while this process would be more cumbersome to administer, the "opportunity to save customers millions or even billions of dollars over the term of these contracts necessitates a detailed review." The Joint Utilities state that any adjustment should not represent a perfect hedge and that "developers should be required to have 'skin in the game' to motivate successful and timely development."

Multiple Intervenors and the Municipal Electric Utilities Association of New York State (MI/MEUA)

MI/MEUA take the position that the Commission should deny the relief requested by ACENY, Empire/Beacon and Sunrise

and direct NYSERDA to issue new competitive solicitations, if needed to replace terminated contracts absent relief, with more onerous contract provisions governing termination and breach "so that the State's efforts to comply with CLCPA mandates are less susceptible to developers' threats seeking increased compensation and/or decreased risk." MI/MEUA estimate that the Empire/Beacon and ACENY Petitions would increase ratepayer costs by a total of \$29.76 billion over the contract terms, in addition to the \$43.8 billion in funding obligations already approved by the Commission to meet CLCPA requirements. MI/MEUA state that the Commission should not grant incremental costs of this magnitude "based on unsupported and untested statements from the developers seeking more money, and one round of stakeholder comments responding to petitions that lack sufficient information to fully evaluate the claims advanced therein." MI/MEUA state that the contract holders agreed to develop and operate the projects at the contract prices and have failed to demonstrate a need for increased compensation. MI/MEUA notes that the Tier 1 attrition to date is well below the design attrition rate. MI/MEUA state further that the Petitions would shift excessive market risk to consumers and appear to want to achieve a guaranteed return for the projects they bid competitively, which typically involves a higher standard of review. MI/MEUA also note that granting the requested relief would set a precedent and "encourage unreasonably low bids in future solicitations based on the expectation that the compensation actually needed to construct a project can be secured later by threatening to abandon a duly executed contract." MI/MEUA urge that "under no circumstances should the Commission consider increasing contract payments above the level



of the lowest bids that previously were rejected for being too costly.”

If the Commission does grant relief, MI/MEUA state that a comprehensive and transparent investigation should be conducted of each project requesting increased compensation.

With respect to Tier 4, MI/MEUA oppose the CPNY Petition’s request to increase the price of CPNY’s generation component for similar reasons as those expressed for Tier 1. MI/MEUA recommend instead that additional competitive solicitations should be authorized to replace developers who are unable or unwilling to perform under their existing contracts.

In supplemental comments regarding Tier 1 and offshore wind, MI/MEUA provide an estimated increase of incremental costs requested by ACENY, Empire/Beacon and Sunrise to \$48.39 billion based on NYSERDA’s comments. MI/MEUA also estimate the incremental cost of the alternative options proposed by NYSERDA at \$20.8 to \$26.0 billion. MI/MEUA reaffirm the position that additional transparency is required regarding the requested relief and the developers receiving it. MI/MEUA also state that any Commission Order granting relief should include a complete rate impact analysis. MI/MEUA support the additional contract terms and conditions recommended by NYSRDA, Joint Utilities, AES and Rise Light & Power, in the event that relief is granted.

Natural Resources Defense Council (NRDC)

NRDC supports a principled approach to the Empire/Beacon, Sunrise and ACENY Petitions that supports the timely completion of projects to meet CLCPA objectives while also minimizing incremental ratepayer costs and maintaining the integrity of the current offshore wind solicitation. NRDC emphasizes the importance of ensuring timely achievement of the

CLCPA's electric sector targets and emission limits. NRDC notes the importance of the CPNY transmission project in addressing disproportionate reliance on fossil fuels downstate. NRDC references a NYISO report identifying forecasted reliability needs beginning in 2025 to reinforce the need for new clean energy capacity to meet near-term needs. NRDC also notes that "a disorderly cadence of clean resource additions will exacerbate administrative burdens associated with integrating new generation," including interconnection, siting, and permitting.

New York Battery and Energy Storage Technology Consortium (NY-BEST)

NY-BEST supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development. NY-BEST states that the ACENY Petition "establishes that the costs of clean energy projects across the U.S. have risen substantially, including in New York" and that failing to grant relief "will result in both years of material delay and substantial additional costs."

New York Independent System Operator, Inc. (NYISO)

NYISO takes no position on the issue of whether, and if so how, Tier 1 Agreements should be modified as requested in the ACENY Petition and submits comments regarding "the importance of developing and deploying generation resources that comply with the CLCPA requirements in a manner that is rationally coordinated with the retirement of existing fossil resources so that system reliability is not jeopardized." NYISO notes that reliable electric service is critical to daily life and economic well-being. NYISO reports that its reliability assessments demonstrate that the addition of new resources is

timely and critical, reporting narrowing reliability margins and an identified deficiency in New York City. NYISO states further that the addition of new resources must be coordinated with and occur prior to the orderly retirement of any existing generators, and that renewable energy generation must still increase substantially to meet CLCPA requirements.

New York League of Conservation Voters (NYLCV)

NYLCV supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. NYLCV states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. NYLCV references Comptroller DiNapoli's recent report on renewable electricity and New York State's struggle to achieve clean energy goals that predates the CLCPA. NYLCV states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

New York Offshore Wind Alliance (NYOWA)

NYOWA "supports in principle the need for a limited, one-time adjustment reflecting the unique circumstances" faced by Empire/Beacon and Sunrise, and "takes no position on the specific adjustment mechanisms proffered by the respective Petitioners." NYOWA states that the Commission "should conduct its consideration of the Petitions in a manner that allows NYSERDA to advance and maintain the continuity of its ORECRFP22-

1 evaluation and broader offshore wind program.” NYOWA notes that the supply chain that that is being developed to support the contracted offshore wind projects would be a dealt a real setback if the projects do not succeed and recommends consideration of “industry data and global market and commodities pricing previously identified by or currently available to NYSERDA in determining inflationary adjustments”.

#### New York State AFL-CIO

The New York State AFL-CIO supports the petitions submitted by Empire/Beacon and Sunrise Wind. The New York State AFL-CIO notes that a robust offshore wind energy generation industry is needed to achieve the emission reductions required by the CLCPA and will “create good family-sustaining, middle-class, union jobs in construction, operations, maintenance, repair, and supply chain.” The New York State AFL-CIO also notes that “offshore wind development in New York is now at risk because of extraordinary inflation since the first round of agreements was awarded,” resulting in the projects no longer being economically viable, and that the projects should have the same opportunity to utilize an inflation adjustment as the bidders in the third offshore wind solicitation.

#### New York State Economic Development Council

The New York State Economic Development Council supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to ensure the provision of reliable power to New York State. The New York

State Economic Development Council states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. The New York State Economic Development Council states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

New York State Energy Research and Development Authority  
(NYSERDA)

NYSERDA's comments provide a summary of the CES portfolio, a review of the market issues raised by the Petitioners - including a report prepared by Industrial Economics (IEc) of both inflation and supply chain trends, analysis of the requested relief and alternative price adjustment options, discussion of the potential impacts of not granting relief, and additional policy considerations. NYSEDA reports IEc's conclusions that "its independent analysis is 'consistent with the representations made by the Petitioners that the inflation observed between 2021 and 2023 was unpredictably high and persistent'" and "'constrained supply chains cannot match the insatiable global demand for renewable energy, resulting in higher costs for solar, onshore wind, and offshore wind projects.'" NYSEDA reports further that based on IEc's analysis, "it does not appear reasonable for developers to have assumed that a low interest rate environment would persist throughout the period in which their projects were to be financed, given that both the levels of interest rates witnessed today and the rate at which rates recently changed are indeed unprecedented."

NYSERDA's analysis of the requested relief shows that based on current indexes, the weighted average strike prices of the offshore wind and Tier 1 portfolios would increase by 48% and 64%, respectively. NYSERDA notes that "the price adjustment mechanisms proposed by the Petitioners, particularly Empire/Beacon and ACE NY, appear to shift risks from developers to ratepayers in a manner that goes beyond, and in some cases does not appear tied to, the extraordinary market circumstances that underly the requests." For offshore wind, NYSERDA specifically identifies interconnection cost adjustments, the addition of an escalator to the Empire 2 and Beacon contracts, the contract term extension for Empire 1, the change in weighting factors for Empire/Beacon from 80% in the ORECRFP22-1 inflation adjustment formula to 100% as being less appropriate to include in an adjustment. For Tier 1, NYSERDA specifically identifies the Module Expectation Factor, the weighting of the Electric Power & Specialty Transformer Manufacturing component, the overall 100% weighting, the interest rate components, and the underlying design basis of allowing 100% of projects to move forward, compared to the expected attrition factor of 20%, as being less appropriate to include in an adjustment.

NYSERDA states that if the Petitioners' claims of non-viability absent relief are taken at face value, project delays and cancellations would significantly slow progress toward meeting CLCPA targets and result in missed opportunities for reliability, resiliency, and health benefits. NYSERDA states that future bid prices are likely to increase, which is consistent with the bid prices submitted in the current solicitations being significantly higher than in prior solicitations, and that project delays are also reasonably expected to increase project costs, resulting in "substantial

risk that bid pricing will not decrease significantly in the near to medium term, which is the critical period during which the bulk of Tier 1 and Offshore Wind procurements will need to be held.”

NYSERDA provides potential alternative inflation adjustment options based on the mechanisms in the current solicitations that would result in offshore wind and Tier 1 strike prices increasing by 31% to 39% and 19% to 26%, respectively. NYSERDA notes that applying a single formula to each program would be administratively efficient and put existing projects on a level footing with projects procured in the current solicitations, and that the amount of generation that would need to be reprocured would be materially higher under the alternative options compared to the requested relief. NYSERDA also provides estimated ratepayer impacts associated with each of the adjustment options.

NYSERDA requests that any Commission Orders granting relief “enumerate any required terms that NYSERDA should include as conditions to offered contract amendments that implement the adjustment, to provide critical certainty to the market and avoid the need for further substantive negotiation” and that the Commission specify any eligibility requirements to receive relief. NYSERDA identifies potential additional contract terms for Commission consideration, including updated milestone deadlines, increased contract security, sharing of federal support, adjusted economic benefits, MWBE and SDVOB provisions, and offshore wind interconnection savings sharing. NYSERDA also provides a recommendation that any inflation adjustment to strike prices should be applied before any capacity accreditation adjustment. NYSERDA notes that any adjustment to

the CPNY contract cannot be designed or evaluated until the outcome of the ACENY Petition is known.

New Yorkers for Clean Power (NYCP)

NYCP supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. NYCP states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. NYCP describes the need to effectively stage the projects to "ensure that an adequate amount of trained labor is available and supply chain constraints are efficiently managed." NYCP states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

Nucor Steel Auburn, Inc. (Nucor)

Nucor recommends that the Commission summarily deny the relief requested in the ACENY Petition because the Petition does not establish that any specific project requires extraordinary relief nor that the requested adjustment mechanism is just, reasonable or in the public interest. Nucor instead characterizes the ACENY Petition as speculative and inconsistent in applying uniform relief to conditions that are project-specific, and states that it is impossible to determine whether the requested "increases are the bare minimum needed to promote project completion or grossly excessive."



Nucor requests that if the Commission does consider granting relief, the matter should be set for evidentiary hearings to determine what, if any, action is warranted based on actual project risk. Nucor states that if relief is granted, it should require that any project receiving relief must also adopt the renewable energy Buy American provisions applied under current law and commit to a low embodied carbon supply chain.

Port of Albany and Marmen Welcon

The Port of Albany and Marmen Welcon support the Empire/Beacon Petition because the "projects hold immense potential in advancing New York's clean energy goals while driving economic growth" and should the Petition not be granted, "the projects and their immense economic impacts will not be realized in and for New York State." The Port of Albany and Marmen Welcon state that the planned tower manufacturing facility "has been directly affected by the impact of unforeseeable economic conditions, including massive inflation, supply chain disruptions and rising interest rates" and that approving the Empire/Beacon Petition is "the right opportunity to solve the tower manufacturing project funding needs" beyond the "substantial investment to assist project progress at the Port of Albany" that Equinor has already made. The Port of Albany and Marmen Welcon further note that the IRA tax credits related to offshore wind investments and manufacturing "have a short lifespan, as compared to the maturity of domestic projects" and that project delays will result in federal benefits being less of an incentive.

Public Utility Law Project of New York, Inc. (PULP)

PULP states that the review of the Petitions "should be conducted in a manner that prioritizes ratepayers generally with an emphasis on energy affordability, equity, and transparency specifically." PULP states that the authorization of contract modifications has the potential to set a significant precedent and that there must be a comprehensive and consistent framework for evaluating potential adjustments that considers justification, affordability, equity, CLCPA mandates, cost of inaction, transparency, foreseeability and risk, and accountability and oversight. PULP notes that ratepayers are feeling increased financial pressure regarding their utility bills and that there must be a sharing of costs if an inflation adjustment is authorized, including with the developers and the State, with relief directed first to low-income customers and those who reside in disadvantaged communities. PULP suggests that this funding could come through the annual State budget process, the Cap and Invest Program, IRA funds from the federal government and contract security forfeited to NYSERDA by cancelled projects.

Rise Light & Power

With respect to the ACENY Petition, Rise Light & Power takes the position that the Commission should not grant the requested relief. Because the "such repricing opportunity is inequitable to the bidders in prior Tier 1 solicitations whose projects were either not selected because their bid price was too high, or who were selected but ultimately withdrew from their Tier 1 award due to the fact that their projects economically unviable (likely due to similar reasons cited in the Petition)." Rise Light & Power notes that many of the Under

Development Projects already received relief through the Fixed-to-Index REC conversion opportunity. Rise Light & Power also states that granting the request relief sets the precedent that projects can request adjustments and leading developers to discount cost risk when setting bid prices. Rise Light & Power further states that there would be significant additional ratepayer costs associated with the requested relief, and that the economic benefits requirements of earlier solicitations were less substantial and would "result in ratepayers paying more for less." Rise Light & Power recommends that the contracts associated with non-viable contracts should be terminated and the contract security retained by NYSERDA, leaving developers free to rebid the projects without prejudice in future solicitations. Rise Light & Power also recommends that the procurement target for RESRFP22-1 be increased to offset potentially non-viable existing contracts, and that NYSERDA should issue the next Tier 1 solicitation soon, retaining the inflation adjustment mechanism included in RESRFP22-1 and allowing projects that withdraw from their contracts to rebid.

If the Commission does grant relief to Tier 1 projects, Rise Light & Power states that projects included within CPNY's portfolio should be excluded from Tier 1 relief and instead be reviewed relative to the CPNY Petition. Rise Light & Power also states that an individual review of each project should be conducted to determine whether relief is needed for the project to be able to continue development, and to determine the amount of the required relief, with a cap based on the award prices in the RESRFP22-1 solicitation. Rise Light & Power further states that projects should be required to meet criteria to receive relief, including viability, ability to achieve commercial operation before 2030, ability to facilitate

the retirement of fossil fueled facilities, disadvantaged community benefits, and ability to provide reliability benefits.

With respect to the Empire/Beacon and Sunrise Petitions, Rise Light & Power takes the position that the Commission should not grant the requested relief because to do so "would be inconsistent with fundamental principles of state contracting and procurement law and undermine rational market expectations with respect to contractual rights." Rise Light & Power states that the OREC agreements "clearly allocate both project cost risk and benefit to Seller." Rise Light & Power notes that "approximately eighty to ninety percent of the construction inflation impacts cited for Empire 2 Wind and Beacon 1 Wind had already occurred by the time their OREC contracts were executed in January 2022" and that it is unclear why the issues in the Empire/Beacon Petition were not raised at that time. Rise Light & Power recommends that if the offshore wind projects are no longer viable, the contracts should be terminated and the contract security retained, and that the projects would then be free to rebid into a subsequent solicitation without prejudice. Rise Light & Power states that Empire/Beacon and Sunrise have not established that the CLCPA goals could not be met absent the relief, and that future procurement targets could be set at a level that would compensate for any attrition.

If the Commission does grant relief to the offshore wind Projects, Rise Light & Power states that material schedule changes should not be allowed, with penalties for extensions to commercial operation dates. Rise Light & Power further states that relief must be capped such that it exceeds neither the weighted average award price in ORECRFP22-1 nor the solicitation's Benchmark LNOC.

With respect to the CPNY Petition, Rise Light & Power takes the position that the Commission should not grant the requested relief because it would be inconsistent with the Tier 4 program design, the Tier 4 RFP, the administrative record, the CPNY contract terms, actual inflationary changes, and principles of state contracting and procurement law. Rise Light & Power states that CPNY “knew or should have known that that its project costs would likely rise when it executed the CPNY Contract in November 2021 and prior to Commission approval in April 2022” and that if, absent relief, CPNY’s Tier 4 contract is no longer financeable, the CPNY contract should be terminated and a new Tier 4 solicitation or PPTN process should be instituted to replace the project. Rise Light & Power states that the delay resulting from an expeditious new solicitation would likely not imperil meeting the CLCPA’s 2030 requirement and would still provide sufficient RECs in time for Local Law 97’s more stringent 2030-2034 requirements.

In supplemental comments on the CPNY Petition, Rise Light & Power states that Tier 4 requires different treatment than the Tier 1 and offshore wind projects because the Tier 4 contracts were the subject of a Commission Order. Rise Light & Power states further that CPNY has not substantiated its claims of non-viability and that the record is insufficient to allow for meaningful public comment and Commission approval.

Sierra Club and Environmental Advocates NY

Sierra Club and Environmental Advocates NY “strongly support the cost-effective achievement of New York’s ambitious but critical renewable energy and climate mandates,” but “do not endorse any particular level of support” for the at-risk projects. Sierra Club and Environmental Advocates NY state that

the Commission should consider the relative cost of the requested adjustments compared to the prices bid in NYSERDA's third offshore wind solicitation, the impacts on customer rates and bills from delaying the at-risk projects, and the risk of not meeting the CLCPA mandate. Sierra Club and Environmental Advocates NY note that "failure to support the at-risk projects will at minimum lead to a multi-year delay of many gigawatts of renewable development." Sierra Club and Environmental Advocates NY are aware of the "precedential impact of allowing retrospective modifications of competitively-bid contracts," but "believe this concern is mitigated in the present circumstance by the fact that automatic inflation adjustors are included in more recently-approved NYSERDA REC contracts."

#### Solar Energy Industries Association

The SEIA supports the ACENY Petition because "New York cannot afford to lose good projects currently under development if the state intends to meet its climate goals," stating further that the "projects in question will create good-paying jobs, drive economic activity, and deliver much needed revenue to local governments ... all while generating emissions-free electricity." SEIA notes that the in-progress projects need to be economically viable in order to continue progressing towards meeting New York's climate mandate and that losing these projects would "throw off the necessary procurement schedule and slow much needed progress."

#### Southwest Brooklyn Industrial Development Corporation (SBIDC)

SBIDC supports the Empire/Beacon Petition because the projects "could never have foreseen the material, labor, and construction costs they are now facing in the wake of the Covid-

19 pandemic and the war in Ukraine” and if the projects do not receive an inflation adjustment, “we risk losing the jobs, opportunities, and economic activity they stand to deliver,” including over 1,000 jobs at SBMT and “significant economic growth along Brooklyn’s working waterfront.”

#### Swan Contracting LLC

Swan Contracting supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. Swan Contracting states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. Swan Contracting states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in “both years of material delay and substantial additional cost.”

#### The American Clean Power Association (ACP)

ACP supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to support the energy needs of New York consumers. ACP states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. ACP states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-

procured, resulting in "both years of material delay and substantial additional cost."

#### The New York State Laborers'

The New York State Laborers' supports the ACENY Petition. The New York State Laborers has worked with renewable project developers to cultivate "a New York based workforce that is well trained, home grown, and provides the economic benefits of quality employment that will make this industry a holistic win for everyone." The New York State Laborers' state that if the financial pressures faced by the projects are not addressed, "the job opportunities so desperately needed in communities across this state will never materialize." The New York State Laborers' further state that labor has "already begun to see some very troubling contractor practices that are all too scare, resembling the frantic rate to the bottom playbook that only hurts working people" and believe that "some of the commitments that have not been honored are a direct result of extreme price pressures created by unique and outlying circumstances." The New York State Laborers' take the position that these pressures could be alleviated by "adequately and appropriately" funding the projects through an inflation adjustment while also noting that the additional funding should be "used to create the types of local, union jobs that were always intended to be created."

#### The Wesson Group

The Wesson Group supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near



term to support the energy needs of New York consumers. The Wesson Group states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. The Wesson Group describes the need to effectively stage the projects to "ensure that an adequate amount of trained labor is available and supply chain constraints are efficiently managed." The Wesson Group states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

#### Town of Hounsfield

The Town of Hounsfield supports granting the relief requested in the ACENY Petition to Boralex, with specific reference to the Greens Corners Solar project, based on Boralex's reported "commitment to the community, willingness to adjust the project based on specific community concerns, and overall corporate stewardship" and "commitment to hiring local companies and workers for the construction phase of the project." Absent the requested relief, the Town of Hounsfield is concerned that "New York risks good developers like Boralex moving to other states," which would mean losing "millions of dollars in PILOT payments and Host Community Benefits across the life of their projects" and "tens of millions of additional economic stimuli throughout construction and operation of Greens Corners Solar and their full portfolio of New York projects." The Town of Hounsfield states that it is crucial to grant relief to Boralex in order to "ensure the state meets its aggressive climate mandates on time" and to avoid "increased costs beyond

the relief requested in the Petition" if developers re-bid their projects.

Utility Intervention Unit, Division of Consumer Protection,  
Department of State (UIU)

UIU notes in response to the ACENY Petition that "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," and states that "the foundational goal of any adjustment is to keep the cost adjustment as low as possible." UIU does not support a blanket single adjustment mechanism for all Under Development Tier 1 projects, suggesting instead that the Commission should develop screening criteria based on the key drivers in the success of operating projects and failure of cancelled projects, in addition to considering project location and electric value, siting issues and the size of each developer's overall portfolio, to identify the projects that are more likely to succeed. UIU suggests that the screening criteria should then be applied to the oldest solicitations and most mature projects first in determining whether a contract modification is warranted for each project, and that "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."

Utility Workers Union of America (UWUA) Local 1-2

UWUA Local 1-2 supports the inflation adjustments requested in the petitions because the projects "are essential to moving us closer to the goals laid out in the Climate Leadership and Community Protection Act" and to "maintain a

competitive environment for existing and future projects.” UWUA Local 1-2 expresses concerns that NYPA’s ability to purchase the projects will expand a monopolistic approach to renewable generation in New York State. UWUA Local 1-2 also supports a carve-out for investor-owned utilities to participate in ownership of renewable generation projects because they “have the capital, scale, and expertise to facilitate a significant influx of new renewable generation.”

#### Wind Works Long Island and Labor Partners

Wind Works Long Island and Labor Partners represents a group of sixteen organizations that supports the Empire/Beacon and Sunrise Petitions, stating that the “requests are reasonable in principle and deserve support.” Wind Works Long Island and Labor Partners state that offshore wind progress must continue, because cancellation of a project “means rebidding and restarting a years-long permitting process that may result in different transmission footprints, economic commitments, and even contracts with other states, causing New York to lose an advantage it strove to secure through bold, early action,” potentially missing CLCPA mandates and incurring higher costs associated with re-bidding, based on current cost trends that suggest any project would be even more expensive if bid at a later date. Wind Works Long Island and Labor Partners state further that making an inflation adjustment provision available to the existing portfolio “would provide meaningful improvements in project viability to help ensure their completion and provide a more rational path than the costly and draconian option of restarting the projects altogether.”

Wyoming County Industrial Development Agency (WCIDA)

The WCIDA supports the ACENY Petition because the affected projects are critical to meeting CLCPA goals and will promote economic development and provide significant and stable additional revenues to local governments in the host communities, and more renewable projects are needed in the near term to meet the energy needs of New York consumers. The WCIDA states that it "has been somewhat disappointed with the pace that projects move into the construction phase" and that WCIDA has done its part to support local projects and is "constantly amending our WCIDA deals and we are not getting any closer to seeing these projects through to construction." WCIDA states that the Petition demonstrates the increasing costs of renewable energy projects and the need for the requested relief. WCIDA states further that absent relief, projects will cancel their contracts and the renewable capacity will need to be re-procured, resulting in "both years of material delay and substantial additional cost."

Comments of Individuals

In addition to the comments summarized above, hundreds of more comments were submitted and considered by the Commission and the Department. Around 1,100 individuals submitted public comments electronically on the Department of Public Service's (DPS) Document and Matter Management System (DMM), and/or they were emailed to the DPS Secretary, under Case No. 15-E-0302 and Case No. 18-E-0071, during the public comment period for the Petitions. A majority of the individual commenters, approximately 950 out of 1,100, support the ACENY Petition. Approximately 125 additional commenters support the CPNY Petition. Approximately 15 of the 1,100 individual commenters

expressed opposition to Commission acceptance of the Empire/Beacon and/or Sunrise Petitions for a variety of reasons including general opposition to offshore wind.