

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-E-0302 – In the Matter of the Implementation of a Large-Scale Renewable Program

**PRELIMINARY COMMENTS OF CLEAN ENERGY ADVOCATES CONCERNING
WHITE PAPER ON CLEAN ENERGY STANDARD PROCUREMENTS TO
IMPLEMENT NEW YORK’S CLIMATE LEADERSHIP AND COMMUNITY
PROTECTION ACT**

Natural Resources Defense Council, Sierra Club, New York League of Conservation Voters and Environmental Advocates New York (the Clean Energy Advocates) respectfully submit the following preliminary comments concerning the White Paper issued by the New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service (DPS) on June 18, 2020 to address the requirements set forth in the Climate Leadership and Community Protection Act (CLCPA) concerning a renewable energy program. Specifically, the CLCPA requires the Public Service Commission (the Commission) to establish a program that requires load serving entities (LSEs) to secure enough renewable energy to serve at least 70% of their load by 2030 (the 70 by 30 Target) and that the electric sector has zero emissions by 2040.¹ Clean Energy Advocates appreciate the opportunity to submit these initial comments with the understanding that we are continuing to evaluate the proposals set forth in the White Paper and look forward to submitting more comprehensive final comments as directed by DPS on August 31, 2020.

¹ PSL § 66-p(2).

Clean Energy Advocates commend NYSERDA and DPS on the preparation of the White Paper with a proposed regulatory structure to achieve these ambitious clean energy requirements. The proposals set forth in the White Paper, if implemented, would build on the existing Clean Energy Standard (CES), which has effectively used a central procurement approach and an LSE obligation to increase deployment of renewable resources. Clean Energy Advocates support this overarching structure and offer comments on how this updated CES can be best designed to ensure that the ambitious electric sector mandates of the CLCPA are achieved.

I. Background

A. Achieving the 2030 and 2040 Electric Sector Mandates is Critical to Meeting the CLCPA’s Clean Energy and Carbon Reduction Goals

With the passage of the CLCPA, New York has enacted the most aggressive climate legislation in the nation. The CLCPA codifies the reality that the State must move urgently and equitably to net zero emissions in all sectors of the economy to avoid the most severe impacts of climate change, prioritize the safety and health of disadvantaged communities, and create high-quality jobs in clean energy. As part of this transformative State policy, a core mandate is rapid decarbonization of the electric sector.

Specifically, the CLCPA requires the Commission to “establish a program” by June 30, 2021 “to require that:

(a) 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; and

(b) that by the year two thousand forty (collectively, the ‘targets’) the statewide electrical demand system will be zero emissions.”²

² PSL § 66-p(2).

With this implementation deadline less than a year away, any Commission orders resulting from the White Paper should be sufficiently ambitious to enable achievement of both the 70 by 30 Target as well as the 2040 zero emissions target. Moreover, decarbonizing the electric sector is essential to achieving the CLCPA's overarching goals for greenhouse gas emissions reduction, which will require electrified end uses and a clean power grid. Meeting these ambitious trajectories will bring new challenges that the Commission should begin preparing for now. The White Paper does appropriately note that "achieving the 70 by 30 Target is a necessary and foundational precondition" for CLCPA implementation beyond 2030.³ In practice, the White Paper's procurement schedules for the next decade should therefore be considered only a floor, and resulting Commission orders should acknowledge that increasingly aggressive schedules will be desirable and may be necessary to ensure achievement of both the 2030 and 2040 targets.

B. CLCPA Implementation Will Have Significant Statewide Benefits

Clean Energy Advocates note that achieving the CLCPA mandates will also bring significant economic benefits to New York State. NYSERDA's initial analysis indicates a net benefit of \$17.3 billion from the proposed procurement schedules: \$7.7 billion from the 2021 to 2026 Tier 1 procurements, and \$9.6 billion from the 2021 to 2027 offshore wind procurements.⁴ These figures take into account electric system values and avoided carbon emissions. However, the societal benefits realized will be even greater, given that this renewable energy deployment will meaningfully decrease non-carbon externalities: reductions in co-pollutants such as SO_x, NO_x, and PM_{2.5} will improve local air quality, in turn protecting public health, improving quality

³ White Paper at 3.

⁴ White Paper at 23-24.

of life, and remedying a legacy of environmental injustice that has imposed disproportionate pollution burdens on disadvantaged communities.

Similarly, NYSERDA's analysis does not account for the broader economic development value of an expanded clean energy sector that will drive new in-state investments and job creation. Unlocking these benefits is expected to have relatively modest impacts on electric bills. NYSERDA estimates that the proposed Tier 1 procurements will have a levelized impact of approximately 35 cents per month for the typical residential customer. With respect to the 2035 9 GW offshore wind goal, this impact is approximately 81 cents per month for the typical residential customer.⁵

History shows that the clean energy sector is a proven catalyst for quick job growth in the aftermath of a recession. No part of the 2009 American Recovery and Reinvestment Act (ARRA) was more successful at stimulating the economy following the Great Recession than the \$90 billion in federal investments in clean energy. The ARRA helped create nearly one million clean energy jobs and resulted in the weatherization of more than one million homes by expanding energy efficiency programs and getting electricians, HVAC technicians, and other construction workers, as well as manufacturers of building supplies and Energy Star appliances, back to work.⁶

C. NYSERDA Should Move Quickly to Implement the 70 by 30 Renewable Energy Program

With less than one year until the June 2021 statutory deadline and only a decade to achieve the 70 by 30 Target, Clean Energy Advocates implore NYSERDA and DPS to ensure that this proceeding progresses expeditiously. To that end, Clean Energy Advocates are pleased

⁵ White Paper at 23.

⁶ E2, Clean Jobs America 2020: Repowering America's Economy in the Wake of COVID-19, at 2 (April 2020).

that the White Paper proposes procurements from 2021 to 2026 to account for the lag time (approximately four years) between approval of contracts and completion and operation of projects.⁷

The White Paper provides a strong foundation for the Commission to promptly refine and expand upon. This proceeding should therefore move forward on a parallel track with the work of the Climate Action Council, but in no event should it be delayed as a result of the work of the Council.

II. CLCPA Requirements

A. NYPA and LIPA’s Participation in the CES is Essential to Meeting the 70 by 30 Target

Clean Energy Advocates echo the White Paper’s call for statewide coordination and commitments from non-jurisdictional LSEs to achieve the State’s clean energy mandates. In the 2016 CES Order, the Commission emphasized that “the New York Power Authority (NYPA) and the Long Island Power Authority (LIPA) . . . will participate in the CES not only to conform to a carbon requirement but to engage in an integrated statewide policy.”⁸ Similar commitments from NYPA and LIPA to participate in the updated, CLCPA-compliant CES will be critical to achieve statewide goals. While NYPA and LIPA are not “jurisdictional load serving entities” for the purposes of the CLCPA’s 70 by 30 Target and 2040 Zero Emissions Target, they are state authorities required to “contribute to achieving the statewide greenhouse gas emissions limits.”⁹

⁷ White Paper at 26.

⁸ Case 15-E-0302, Order Adopting a Clean Energy Standard at 6 (Aug. 1, 2016), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={44C5D5B8-14C3-4F32-8399-F5487D6D8FE8}>

⁹ CLCPA §§ 4, 8.

As in the 2016 order, the Commission should again be “looking to all suppliers, including NYPA, LIPA and all others, to participate by satisfying their requisite share of responsibility.”¹⁰ Clean Energy Advocates therefore welcome the White Paper’s indication that NYPA and LIPA will notify NYSERDA at least annually of their plans to participate in CES procurements and/or self-supply to meet their proportional shares of the CLCPA requirements.

B. Clean Energy Advocates Agree with the White Paper’s Definition of Renewable Energy Systems

As stated in the White Paper, the CLCPA definition of “renewable energy systems” differs from the prior eligibility criteria of the 2016 CES order.¹¹ Clean Energy Advocates support the White Paper’s proposal to decline to expand resource eligibility in the updated CES beyond the technologies provided in the CLCPA. While NYSERDA should continue to perform under existing contracts, the CLCPA definition should govern all future procurements, subject to the additional limitations recommended in the White Paper and the comments that follow.

Although achieving the 70 by 30 Target will necessitate aggressive deployment of renewables in the coming decade, the Commission should decline to expand resource eligibility requirements beyond those listed in the CLCPA; should not include large hydropower in the list of eligible Tier 1 or Tier 2 resources; and should limit hydropower eligibility for Tier 4 consistent with the guardrails in the White Paper and comments below. None of the resources excluded from this list has an environmental or climate profile that warrants modification of existing eligibility requirements.

¹⁰ Order Adopting a Clean Energy Standard at 8.

¹¹ White Paper at 10.

C. The 70 by 30 CES Must be Designed to Provide Benefits to Disadvantaged Communities as Required by the CLCPA

Foundational to CLCPA implementation is the requirement of providing substantial benefits and preventing disproportionate burdens to disadvantaged communities. In updating the CES to achieve the CLCPA’s electric sector targets, the Commission must also advance these overarching mandates. In these initial comments, Clean Energy Advocates stress several principles that should guide the Commission’s work in this regard.

First, the Commission should ensure that any order resulting from the White Paper includes a meaningful stakeholder engagement process to thoroughly address the input of environmental justice and disadvantaged communities. Further stakeholder outreach by NYSERDA and DPS may be warranted to encourage this input. This additional outreach could be conducted in partnership with the CLCPA Climate Justice Working Group to help facilitate equitable engagement.

Second, future CES solicitations should prioritize proposals that benefit disadvantaged communities. Past NYSERDA evaluations of economic benefits have not considered who receives them.¹² For example, the 2019 Tier 1 RFP assigned a 10% weight to “Incremental Economic Benefits,” encompassing “short-term economic benefits to New York State” (e.g., short-term jobs, land purchase payments, purchase of local goods and services) and “long-term

¹² Clean Energy Advocates note with encouragement that the July 21, 2020 Tier 1 and Offshore Wind RFPs do include provisions to reward bids with demonstrated benefits for disadvantaged communities. *See* RESRFP20-1 at 21 (“NYSERDA will award more points to Long-Term Economic Benefits to New York State that will be realized in part or in full by Disadvantaged Communities . . . Bid Proposals will be awarded more points by the TEP if the Proposer can demonstrate benefits of the project’s development are afforded to communities located in low-income census tracts, Potential Environmental Justice Areas, and New York Opportunity Zones”); ORECRFP20-1 at 29 (“In developing each Proposal’s Economic Benefits Plan, Proposers are encouraged to recognize NYSERDA’s support of the CLCPA commitments to prioritize benefits to Disadvantaged Communities . . . Such CLCPA commitments to Disadvantaged Communities will therefore be weighted to reflect such prioritization”). The Commission should consider ways to build upon these provisions, which we look forward to further reviewing in partnership with other stakeholders.

economic benefits to New York State” (e.g., long-term jobs, increased tax payments or PILOT agreements, host community payments, mitigation/conservation payments, lease payments, and fuel purchases associated with production of electricity).¹³ Similarly, the 2018 Offshore Wind RFP assigned a 20% weight to “New York Economic Benefits,” encompassing “project-specific spending and job creation,” “investment in offshore wind-related supply chain and infrastructure development,” and “input activities that provide opportunities for the New York offshore wind supply chain, workforce, and research and development.”¹⁴ In addition to economic benefits, the Commission should also consider ways to reward proposals that will result in reduced greenhouse gas emissions and co-pollutants in disadvantaged communities, as required by the CLCPA.¹⁵

Third, the CLCPA requires that the “administrative approvals and decisions” of “all state agencies, offices, authorities, and divisions shall not disproportionately burden disadvantaged communities.”¹⁶ This includes any decisions regarding the proposed Tier 4 program, such as resale of RECs, that could potentially cause disproportionate burdens.

III. 2030 Electric Load Forecast Is Understated and Should Be Revised

The White Paper estimates 151,678 GWh of statewide load in 2030. For the reasons set forth below, we believe this forecast may be too low and urge NYSERDA to revisit its

¹³ NYSERDA, Renewable Energy Standard Purchase of New York Tier 1 Eligible Renewable Energy Certificates Request for Proposals (RFP) No. RESRFP19-1 RFP at 53-54 (Apr. 23, 2019), <https://portal.nyserdera.ny.gov/servlet/servlet.FileDownload?file=00Pt000000Gp6qiEAB>

¹⁴ NYSERDA, Purchase of Offshore Wind Renewable Energy Certificates Request for Proposals ORECRFP18-1 (Nov. 8, 2018) at 23, <https://portal.nyserdera.ny.gov/servlet/servlet.FileDownload?file=00Pt000000Fx0rjEAB>

¹⁵ CLCPA § 7(3) provides that in “the execution of grants, loans, and contracts . . . all state agencies, offices, authorities, and divisions shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.”

expectations regarding EV load and its approach to estimating savings attributable to New York’s energy efficiency programs.

Electric load has been flat or declining driven by improvements in energy efficiency. However, this trend is likely to reverse in the coming years because additional sectors of the economy must be increasingly powered by electricity, including buildings and vehicles. Forecasting electric load going forward presents challenges in light of these electrification trends, as exemplified by the dramatic shift in load forecasts between NYISO’s 2020 and 2019 Gold Book forecasts.¹⁷

While it is not possible to forecast electric load to 2030 with complete accuracy, it is important that the load forecast that NYSERDA uses to calibrate its solicitations sets the program up for success. There are three primary sources of uncertainty that need to be addressed in NYSERDA’s 2030 load forecast:

- (a) load increase due to building electrification;
- (b) load increase due to transportation electrification;
- (c) load reduction due to energy efficiency investments;

For building and transportation electrification, we support NYSERDA’s proposed approach to base forecasts on compliance with the CLCPA’s 2050 climate mandates. As the White Paper explains, “[t]he 2030 load projection . . . incorporates decarbonization measure estimates across all sectors at levels necessary to achieve the CLCPA requirements.”¹⁸ However, we believe that for the transportation sector, even more aggressive electrification is going to be required to put New York on track to meet 2050 CLCPA requirements.

¹⁷ NYISO nearly doubled its forecast of 30-year annual average growth rate from 0.43% in the 2019 Gold Book to 0.78% in the 2020 Gold Book. NYISO, 2020 Load & Capacity Data Report (2020 Gold Book) at 1 (Apr. 2020).

¹⁸ White Paper at 19.

In 2019, Sierra Club retained Synapse Energy Economics to model an on-road vehicle electrification trajectory that would be achievable using available policies and would put the State on track for 2050.¹⁹ The White Paper assumes 9,048 GWh of additional load from electric vehicles, corresponding to 17 percent of on-road vehicle stock being electric in 2030. This is far below the approximately 30 percent of on-road vehicle stock Synapse modeled as being electrified by 2030 in order to keep New York on a workable trajectory to its 2050 goals.²⁰ Synapse's analysis also reflects a higher level of LDV EV sales in 2030 than the White Paper and underlying Pathways report.²¹ Consequently, NYSERDA should revisit the assumptions underpinning the 17 percent vehicle stock calculation, as it appears too low to be part of a workable trajectory to 2050. And load attributable to electric vehicles for 2030 should likely be revised upward.

For energy efficiency we believe a different approach is appropriate. To avoid under-procuring, we recommend that NYSERDA forward cast based on actual trends in energy savings achieved to date. While Clean Energy Advocates strongly support continuation of aggressive energy savings targets for New York and believe that utilities will achieve these targets, if it becomes clear in later years that these energy efficiency savings are not materializing at the full rate desired, it may be difficult to catch up on the needed renewable energy procurements. To help ensure success in meeting the 70 by 30 Target, it is prudent to take the more conservative approach of forward-casting rather than back-casting savings attributable to energy efficiency.

¹⁹ Transforming Transportation in New York: Roadmaps to a Transportation Climate Target for 2035 (Sept. 2019), available at <https://www.synapse-energy.com/project/transforming-transportation-new-york>.

²⁰ Synapse Rpt. at 8 & Fig. 4.

²¹ Synapse modeling has 75-80 percent of LDV sales being electric by 2030, Synapse Rpt. at 8, while the Pathways Report has 60-70 percent. Pathways Rpt. at 4.

IV. Clean Energy Advocates Support the Proposed Tier 1 Procurement Approach with Modifications

The 70 by 30 Target is ambitious and will be challenging to achieve. To maximize the strength of the renewable energy standard (RES) and likelihood of success – and to send a clear and strong investment signal to renewable energy developers – the Order resulting from this proceeding should lay out a multi-year procurement schedule (for years 2021 to 2026) and establish a clear expectation that NYSERDA will procure 4,500 GWh per year from Tier 1 resources.

We agree that NYSERDA should have flexibility on the upper end to procure as much renewables in any annual solicitation as NYSERDA deems cost-effective. We disagree, however, that NYSERDA be granted unfettered discretion regarding minimum total procurements. If NYSERDA gets too far behind the 4,500 GWh per year trajectory, it will quickly become impossible as a practical matter to catch up and successfully meet the 70 by 30 Target. Consequently, while we do not recommend imposing minimum procurements on any individual solicitation, should NYSERDA fall more than 1,000 MW behind the 4,500 GWh/year linear trajectory following any annual solicitation, it should be required to conduct a make-up solicitation in that same calendar year to get back on track. Alternatively, as we recommend below in the context of offshore wind solicitations, the Commission could require NYSERDA to conduct additional solicitations or increase the amount procured in annual solicitations if the three-year average falls below the 4,500 GWh/year trajectory.

We support the White Paper recommendation that all procurements for Tier 1 resources needed to comply with the CLCPA's 70 by 30 Target should be completed by 2026. Due to the lag time between contracting and project operation alluded to above (approximately four years),

2026 is the outside date to contract for Tier 1 renewables that will need to go through the permitting and construction process in order to be in commercial operation by 2030.

While the Commission has not expressly requested input on contract length for Tier 1 projects, the White Paper proposes contract lengths of up to 30 years for Tier 4 projects, 10 years longer than current Tier 1 contracts. As discussed further below in our comments on Tier 4, we do not believe it is appropriate or advisable for Tier 4 contract lengths to be for 30 years or to exceed those for Tier 1. However, there are sound policy reasons to consider extending the length of Tier 1 contracts, for example to 25 years. Longer contracts lock in REC price for developers for a longer period of time and, as a consequence, should result in lower bids from developers (i.e., a guaranteed revenue stream for a longer period should allow developers to bid lower REC prices). At the same time, 25-year contracts will cover a greater fraction of the expected commercial life of renewable projects. This will reduce the number of years that these projects would need to be supported through Tier 2 or a similar mechanism once they go off of their original Tier 1 REC contract.

V. Offshore Wind Procurements

A. The Commission Should Formally Adopt the CLCPA's 9 GW Goal, Grant NYSEERDA Flexibility in Determining Solicitation Amounts, and Adopt Mechanisms to Prevent Shortfalls

While these comments focus on the issues addressed in the White Paper, Clean Energy Advocates first reiterate that future offshore wind solicitations should maintain current procurement provisions, including fixed and indexed ORECs, mandatory prevailing wage and efforts to secure Project Labor Agreements, evaluation criteria that incentivize local supply chain sourcing, community benefit requirements, and environmental and fisheries Best Management Practices. In addition, it may be appropriate to incorporate expanded contract provisions as a

result of deliberations of the Technical Working Groups. Further, the Commission should request that NYSERDA undertake a study of the contracting mechanisms employed to date in order to evaluate their cost-efficacy for ratepayers and the need for additional or alternative contracting mechanisms in the future.

Clean Energy Advocates agree with the White Paper's recommendation that the Commission formally adopt the CLCPA's statewide goal of 9 GW of offshore wind by 2035 and grant NYSERDA the authority to procure the OREC's necessary to procure the remaining 7,200 MW to hit this target (an amount that may be reduced by up to 2,500 MW, depending on the results of the 2020 solicitation). The grant of such authority will enable NYSERDA to conduct remaining solicitations without having to seek additional approval from the Commission and will help ensure that these annual solicitations occur in a timely manner.

Clean Energy Advocates generally agree with the White Paper's proposal that, while NYSERDA should strive to conduct procurements in a manner that ensures cumulative contracted capacity of between 750 MW and 1,000 MW per year, that it not have minimum or maximum procurement requirements for any one solicitation to retain flexibility to respond to market conditions. However, the procurement schedule should include mechanisms to prevent any chronic shortfalls. While the White Paper discusses the opposite possibility (of cancelling or delaying a future solicitation "if NYSERDA selects more than one large project in a single solicitation"),²² the Commission should also authorize the use of make-up solicitations in years during which procurement under the first solicitation falls below a certain amount.

Clean Energy Advocates propose that NYSERDA be subject to a multi-year minimum. For example, the White Paper's proposal of ensuring a minimum, cumulative contracted capacity

²² White Paper at 39.

roughly between 750 MW and 1,000 MW per year through 2027 should be supplemented with a requirement that both the 2021-2023 and 2024-2026 three-year periods result in an average 750-1000 MW procurement level per year. This requirement would not impose a minimum procurement level for any one solicitation, but would require NYSERDA to keep pace by conducting additional solicitations or increasing the amount procured in regular solicitations if the three-year average fell below 750-1000 MW per year. Alternatively, as we recommend above in the context of Tier 1 procurements, NYSERDA could be required to conduct a make-up solicitation in the same calendar year following a solicitation that falls significantly below the targeted 750-1000 MW procurement level.

B. NYSERDA and DPS Should Consider Coordinated Approaches to Transmission that Result in Cost-Effective Achievement of 9 GW Target

Rapid, cost-effective deployment of offshore wind will require advances in transmission planning, including consideration of more coordinated alternatives to the project-by-project approach. This current “direct radial” approach (of generator lead-lines built individually to support each new offshore wind project, rather than transmission solutions that support multiple projects) will remain expedient in the short-term. Clean Energy Advocates agree with the Commission that “reliance on direct radial interconnections for [the 2020] solicitation remains appropriate,” to avoid delaying these procurements.²³ The White Paper reiterates that alternative approaches remain “speculative,” and that without new federal Wind Energy Areas “available for lease until 2021 at the earliest,” any “coordinated transmission solutions cannot be reasonably designed, proposed, or evaluated with any certainty.”²⁴

²³ Case 18-E-0071, Order Authorizing Offshore Wind Solicitation in 2020 at 27 (Apr. 23, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D8638FB7-3386-4105-9D47-BA838316C477}>

²⁴ White Paper at 40.

While cognizant of these short-term limitations, Clean Energy Advocates emphasize that reaching 9 GW (and beyond) of offshore wind will likely require a more coordinated approach to transmission. Continued reliance on project-by-project interconnections could create unintended bottlenecks, making future development more difficult and more expensive. Alternative approaches, such as investing in shared “backbone” transmission networks to accommodate multiple projects, would allow for more cost-effective and harmonized deployment going forward. Clean Energy Advocates look forward to NYSERDA and its State partners sharing the results of their ongoing study of the potential for coordinated transmission alternatives.

Additionally, as the White Paper notes, “the recently-enacted Accelerated Renewable Act requires DPS, in consultation with NYSERDA, LIPA and NYPA, to undertake a ‘comprehensive study for the purpose of identifying distribution upgrades, local transmission upgrades and bulk transmission investments that are necessary or appropriate to facilitate the timely achievement of the CLCPA targets.’”²⁵ Initial findings and recommendations are due by the end of 2020.²⁶ This initial report should include an assessment of the potential for backbone transmission networks or other non-radial alternatives.

C. NYSERDA Should Conduct a Feasibility Study for Great Lakes Wind

Given the ambition of the CLCPA and the scale of renewable resources required to achieve economy-wide decarbonization, Clean Energy Advocates support the development of a New York State Great Lakes Wind Feasibility Study. The CLCPA’s limits on greenhouse gas emissions necessitate rapid electrification and accompanying increases in electric load. The State

²⁵ White Paper at 41 (citing Accelerated Renewable Energy Growth and Community Benefit Act §7(2)).

²⁶ The Act requires an “initial report of findings and recommendations within 270 days of the effective date of this section,” which became effective on April 3, 2020 when signed into law as part of the 2020 budget. The deadline for this initial report is thus December 29, 2020.

will therefore need to maximize procurement of renewable resources in both the short- and long-term. As part of maximizing the State’s clean energy potential, the Commission should authorize NYSERDA to expeditiously and inclusively prepare a feasibility study to assess possibilities for wind energy development in Lake Erie and Lake Ontario.

Clean Energy Advocates agree that a feasibility study should include “environmental justice” considerations and use an analytical “framework that is sensitive to environmental, maritime, economic, and social issues.”²⁷ More specifically, Clean Energy Advocates recommend that the study directly assess potential burdens and benefits on disadvantaged communities, given that CLCPA implementation must “not disproportionately burden disadvantaged communities” and should be “designed to achieve a goal for disadvantaged communities to receive forty percent of overall benefits.”²⁸

In addition to the components outlined in the White Paper, the feasibility study could also identify implementation options for best incorporating Great Lakes wind projects into future CES procurements.

VI. Tier 4

As contemplated by the CLCPA, meeting the 70 by 30 Target is vitally important not only to achieve a decarbonized future, but to remedy present injustices of disproportionate pollution burdens and climate impacts. Accordingly, Clean Energy Advocates appreciate the White Paper’s emphasis on incentivizing more renewable energy that is deliverable into the New York City area, where much of New York’s population and load is located, and which currently hosts many of the State’s oldest and most highly polluting fossil generating units. As the White

²⁷ White Paper at 42-43.

²⁸ CLCPA §§ 2, 7.

Paper recognizes, the Atlantic offshore wind resource is ideally situated to provide a large amount of renewables directly into the New York City and Long Island grid. The White Paper calculates that even with this offshore wind, however, there will be a shortfall of clean energy deliveries into Zone J.²⁹ It therefore recognizes the value of transmission that is capable of delivering clean energy into the region.

Clean Energy Advocates believe that any new CES tier for Zone J delivery should focus on the importance of intrastate transmission projects such as the Empire State Connector. The development of renewable energy in upstate New York is a State policy priority, as indicated by the passage earlier this year of the Accelerated Renewable Energy Growth and Community Benefit Act. These homegrown renewables have the ability to power downstate load while keeping money in the New York economy: if sufficient transmission interconnection between upstate and downstate is developed, these benefits will include new family-supporting jobs and careers, expanded local supply chain and economic development opportunities for communities, and direct increases in local tax bases. Therefore, Clean Energy Advocates recommend that the State consider a weighted criterion and/or extra scoring for intrastate contracts awarded under Tier 4 that deliver Tier 1, Tier 2 and offshore wind generation directly into Zone J.

As identified in the White Paper, there are potential pitfalls that could undermine the economic and environmental benefits of clean energy procured through the proposed Tier 4. While the White Paper appropriately identifies additionality and climate benefits as prerequisites for Tier 4 eligibility, its approach to evaluating these prerequisites should be made more robust.

Specifically, we recommend the following preliminary changes to the White Paper's proposed accountability mechanisms: (1) changing the historic baseline from a three-year

²⁹ White Paper at 46.

average to a single-year benchmark based on 2018 deliveries; (2) preventing double-counting of any Tier 4 RECs resold to non-jurisdictional LSEs by excluding these RECs from CES compliance; and (3) clarifying that deliveries enabled by any actions that result in flooding additional areas (i.e., creation of new impoundments or expansions of existing impoundments) are not eligible for Tier 4.

First, the White Paper proposes to establish the historical baseline as the “average of the three most recently reported years prior to the establishment of Tier 4.”³⁰ However, the use of the proposed 3-year historic baseline ignores actual trends in deliveries into the United States. Canadian hydropower imports into the United States have been steadily rising in recent years. In light of these trends, using an average of the most recent three years of delivery levels could lead to understating future deliveries that would occur in the absence of a new Tier 4.³¹ Thus, a more appropriate baseline for evaluating additionality should be at least as high as 2018 deliveries into the NYCA, which is the most recently reported year.

Second, the White Paper’s approach to resale of Tier 4 RECs is problematic. NYSERDA seeks to count toward RES compliance any RECs purchased through Tier 4, even if resold to an entity that is not a New York-jurisdictional LSE.³² But REC sales to an entity that lacks a direct compliance obligation—and thus an incentive to retire the REC—could raise concerns about the integrity of the RES.³³ Notably, the CLCPA’s 70 by 30 requirement is that “a minimum of seventy percent of the state wide electric generation *secured by jurisdictional load serving*

³⁰ White Paper at 49.

³¹ Clean Energy Advocates share NYSERDA’s concern that 2020 data may not be indicative of the appropriate baseline due to the impacts of COVID-19 on energy consumption. White Paper at 49 n.68.

³² White Paper at 55.

³³ Suppose, for example, that NYSERDA resold RECs directly to an out-of-state utility with compliance obligations under another state’s renewable portfolio standard. Problematic double-counting would result if the renewable attributes of the underlying generation were being counted against two states’ clean energy targets.

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.”³⁴ NYSERDA should not use sales of Tier 4 RECs to the voluntary market to water down this obligation.

Third, the White Paper should shore up eligibility requirements to clarify that deliveries enabled by any actions that result in flooding additional areas are not eligible for Tier 4. As the White Paper recognizes, the proposed Tier 4 will not contribute to achievement of New York’s climate objectives if the additional energy it procures or enables results in adverse climate impacts. The White Paper appropriately disqualifies generation from new impoundments, but does not address expansions of existing impoundments, which raise similar climate concerns. The White Paper also does not address induced development of new impoundments to meet growing load in Canada attributable to commitments to sell current surplus energy into New York. It is critical that NYSERDA develop a robust accounting mechanism for its supplier greenhouse gas baseline to preserve the climate integrity of the program

Additional features of the proposed Tier 4 program merit comment, including pricing and contract duration. As noted above, Clean Energy Advocates have recommended increasing contract lengths to 25 years for Tier 1 projects. In the context of Tier 1, the contracts are being used to support the financing of new renewable energy, which may not be true for Tier 4 resources. Clean Energy Advocates believe that the contract duration for Tier 4 resources should not exceed the maximum contract length for Tier 1.

With regard to pricing, the White Paper provides only that Tier 4 RECs be capped at an “amount benchmarked to prevailing Tier 1 REC prices.”³⁵ The word “benchmarking” leaves significant ambiguity regarding the relative pricing of Tier 1 and Tier 4 RECs. During the

³⁴ PSL § 66-p(2), added by CLCPA § 4.

³⁵ White Paper at 52.

Technical Conference on July 14, DPS Staff suggested that “benchmarked” was intended to mean “capped at.” However, later during the Technical Conference, Staff appeared to back away from this interpretation. If Tier 4 is going to be open to a broader set of resources than are eligible for Tier 1, Tier 4 REC prices should not exceed prices for their Tier 1 counterparts.

Finally, any Tier 4 program should avoid inadvertently chilling other needed investments in renewable energy deployment. The White Paper makes an initial proposal that “any amounts procured through Tier 4 would reduce the amount that must be procured through Tier 1.”³⁶ If additionality and greenhouse gas benefit requirements are robust, then Tier 4-procured renewable energy deliveries into Zone J would indeed contribute to achievement of the 2030 and 2040 electric sector targets. That said, meeting those targets will also depend on a strong and predictable signal from Tier 1 procurement schedules. As such, any new Tier 4 program should be carefully designed to avoid casting undue uncertainty on Tier 1 solicitations in the coming years. Clean Energy Advocates request clarification from NYSERDA and DPS as to the potential interplay between Tier 1 and Tier 4 procurement amounts. We reiterate the principle that an aggressive, dependable Tier 1 procurement schedule will promote cost-effective renewable energy investments and help the State remain on track to meet CLCPA goals, even in the face of uncertainties such as future electric load and project attrition rates.

VII. Tier 2 Program

A. Clean Energy Advocates Support the Creation of a Competitive Tier 2 Program

As Clean Energy Advocates have stated in the ongoing proceeding, we support the creation of a competitive Tier 2 program pursuant to which NYSERDA would issue a series of

³⁶ White Paper at 22.

annual competitive procurements for Renewable Energy Certificates (RECs) from eligible existing renewable resources to provide compensation for the beneficial environmental attributes associated with their generation.³⁷

B. NYPA’s Request to Participate in the Tier 2 Program Appears Premature

Clean Energy Advocates support a Competitive Tier 2 program to ensure continued operation of New York’s existing renewable resources and retain in-state sales of associated environmental attributes, which generators might otherwise sell into other markets. But unlike private developers that may choose to seek value out-of-state based on market conditions, NYPA is a public authority operating under a different set of responsibilities and priorities. As NYPA stated in comments on NYSERDA’s petition, “NYPA is committed to ensuring that its renewable assets remain available to contribute to achieving the State’s clean energy goals and is taking a number of actions to support their continued operation.”³⁸ Given this important distinction between NYPA’s fleet and non-state-owned renewable resources, it may be premature to extend Tier 2 eligibility to NYPA resources in the initial authorization of the program.

NYPA has requested such eligibility “at the outset, rather than requiring the Commission to revisit the proposed Program design after a foreseeable market issue develops.”³⁹ However, a “revisit” approach may be more appropriate, in order to tailor any response necessary in the future to NYPA’s unique circumstances. Moreover, in lieu of Competitive Tier 2 eligibility, the

³⁷ Case 15-E-0302, Comments of Clean Energy Advocates in Support of NYSERDA’s Petition for a Competitive Tier 2 Program for Baseline Renewable Generation (May 4, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C577FB92-0A90-4F8C-A77C-7FE8F93E0919}>

³⁸ Case 15-E-0302, Comments of the New York Power Authority at 3 (May 4, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F7F03C62-C468-4919-97F5-D1815CF17739}>

³⁹ *Id.* at 4.

Commission could consider extending Maintenance Tier eligibility to any at-risk NYPA hydroelectric resource that demonstrates a financial need and would otherwise cease operation.⁴⁰ Given the ongoing contributions of NYPA customers in supporting much of the State’s baseline renewable generation, it may also be appropriate for NYPA not to take on an LSE obligation for purchasing new Tier 2 RECS. As contemplated in NYSERDA’s petition, NYPA could instead determine “that a different manner of support is more effective” than voluntarily assuming Tier 2 obligations.⁴¹

Any future consideration of Tier 2 eligibility for NYPA’s hydroelectric resources should include a clear assessment of why such eligibility is necessary and more appropriate than other alternatives. NYPA has framed its request for Tier 2 eligibility as seeking to prevent reduced dispatch due to a competitive disadvantage for its hydroelectric assets. However, NYPA has provided only a general warning about this potential risk. NYPA’s comments assert that its hydroelectric assets, if ineligible for Tier 2, would “have to submit comparatively higher bids into the NYISO market”⁴² and may be “selected to run in the [NYISO] markets less often.”⁴³ Clean Energy Advocates request clarification from NYPA about the magnitude of this risk: how much “less often” might its bids clear; under what conditions might this lead to reduced dispatch;

⁴⁰ See Case 15-E-0302, Order Adopting Measures for the Retention of Existing Renewable Baseline Resources (Mar. 16, 2018).

⁴¹ Case 15-E-0302, NYSERDA Petition Regarding Clean Energy Standard Competitive Tier 2 Program for Baseline Renewable Generation at 6, n.15 (Jan. 27, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D9032507-2912-40DE-B116-BCBA9DB0F4FE}>

⁴² Case 15-E-0302, Comments of the New York Power Authority, at 3 (May 4, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F7F03C62-C468-4919-97F5-D1815CF17739}>

⁴³ Case 15-E-0302, Reply Comments of the New York Power Authority, at 2 (May 29, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={287EC8CE-DD8D-4381-A021-7B63AB9F9219}>

and to what extent would this problem justify additional Tier 2 costs to NYPA customers (or potentially other ratepayers).

Clean Energy Advocates also note that NYPA's concerns about competitiveness in the wholesale markets could be addressed through other avenues. As NYPA indicated, "existing NYISO market mechanisms do not compensate renewable generators for the environmental attributes associated with their supply."⁴⁴ While NYPA proposes to address this issue through Tier 2 eligibility, the Commission's pending Resource Adequacy Proceeding⁴⁵ entails a more holistic consideration of the underlying discrepancies between NYISO's current market design and the State's clean energy mandates. In this proceeding, NYPA has called for "an improved Resource Adequacy regime" and "changes to the E&AS [energy and ancillary services] markets" to "ensure existing PPARs [Public Policy Attribute Resources], such as NYPA's hydro facilities and renewable resources whose REC contracts are expiring, are sufficiently compensated that they remain economically viable."⁴⁶ Given that NYPA's request for Tier 2 eligibility is grounded in concerns about wholesale market design and not in concerns about risk of closure or incentives to sell into out-of-State markets, this request could be reconsidered at the conclusion of the Resource Adequacy Proceeding.

In the event that the Commission does extend Tier 2 eligibility to NYPA resources, such eligibility should be carefully designed to avoid cost impacts on Commission jurisdictional ratepayers. NYPA has stated that it would "not seek to participate in NYSERDA's proposed

⁴⁴ Case 15-E-0302, Comments of the New York Power Authority, at 3 (May 4, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F7F03C62-C468-4919-97F5-D1815CF17739}>

⁴⁵ Case 19-E-0530, *Proceeding on Motion of the Commission to Consider Resource Adequacy Matters*.

⁴⁶ Case 19-E-0530, Comments of the New York Power Authority, at 19 (Nov. 8, 2019), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CFEE6E47-1DED-488F-812D-37B39C598129}>

initial 3-year solicitations” and “would not seek to participate in any subsequent Tier 2 solicitations unless the Commission and NYSERDA first determine that such participation would be in the best interest of New York ratepayers.”⁴⁷ Clean Energy Advocates emphasize the importance of this condition, given that achievement of the CLCPA electric sector goals will require cost-effective allocation of ratepayer funds to support in-state retention of renewable attributes that would otherwise be unavailable.

C. Any Sale by NYSERDA of Voluntary Tier 2 RECs to Non-Compliance Entities Should Not Count Toward the 70 by 30 Target

As Clean Energy Advocates made clear in our comments in the Tier 2 proceeding, we support NYSERDA’s goal of promoting a voluntary market for renewable energy.⁴⁸ That said, given the uncertain ability of the voluntary market to provide significant investment levels, NYSERDA’s procurement obligation should not be reduced based on an assumption of voluntary market growth. Instead, NYSERDA’s solicitations should be sized, in aggregate, to procure approximately all of the RECs from Tier 2-eligible generation not presently participating in the voluntary REC market. Anticipating and allowing for NYSERDA to procure a high percentage of Tier 2 RECs will ensure consistent and robust support for baseline renewable generation.

In addition, to the extent that NYSERDA resells Tier 2 RECs that it procures to CCAs, ESCOs, and other interested entities, these resales should not count toward the 70 by 30 Target for the same reason, discussed above, that any voluntary purchases of Tier 4 RECs should not

⁴⁷ Case 15-E-0302, Reply Comments of the New York Power Authority, at 2-3 (May 29, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={287EC8CE-DD8D-4381-A021-7B63AB9F9219}>

⁴⁸ Case 15-E-0302, Comments of Clean Energy Advocates in Support of NYSERDA’s Petition for a Competitive Tier 2 Program for Baseline Renewable Generation (May 4, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C577FB92-0A90-4F8C-A77C-7FE8F93E0919}>

count: the CLCPA requires that 70% of “electric generation *secured by jurisdictional LSEs*” be generated by renewable energy systems by 2030.⁴⁹

VII. NYSERDA Should Continue Offering Fixed RECs Alongside Index RECs

In January 2020, the Commission issued an “Order Modifying Tier 1 Renewable Procurements” that “directs NYSERDA to offer bidders an Index REC price option in future RES solicitations, beginning in 2020.”⁵⁰ Historically, NYSERDA has used Fixed-Price REC contracts, whereby winning bidders “receive a fixed as-bid REC price throughout the contract lifetime” for the environmental attributes associated with the MWh output of their facilities.⁵¹ In contrast, an Index REC contract “is based on the developer’s estimated revenue requirement for the project (i.e., strike price) and varies over the life of the contract based on the net difference between the strike price” and “the energy and capacity revenues expected to be earned in the wholesale markets.”⁵²

Clean Energy Advocates support the availability of an Index REC price option. This structure can provide developers with a greater likelihood of earning their revenue requirement, while simultaneously yielding lower and less volatile costs to ratepayers. For example, NYSERDA’s November 2018 offshore wind procurement offered and selected the Index OREC bid option for both projects, viewing this as a “successful step” with “the advantage of stabilizing project revenues and ratepayer costs.”⁵³ The White Paper similarly notes the potential for the Index REC mechanism to “lower overall procurement costs” and thus recommends “that the

⁴⁹ PSL § 66-p(2), added by CLCPA § 4.

⁵⁰ Case 15-E-0302, Order Modifying Tier 1 Renewable Procurements at 3 (Jan. 16, 2020), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1F9CA0EB-3968-41DB-BBE0-C251A3FE52DE}>

⁵¹ *Id.* at 2.

⁵² *Id.*

⁵³ *Id.* at 8-9.

Commission grant NYSEERDA authority to solicit both Fixed and Indexed REC bids under [the proposed] Tier 4” program.⁵⁴

Clean Energy Advocates recommend that NYSEERDA continue to solicit Fixed REC bids alongside any future offerings of the Index REC option. Maintaining the Fixed REC option, as the Commission has directed NYSEERDA to do under Tier 1 and offshore wind procurements, may help protect State solicitations against the risk of litigation over Federal Power Act preemption. In 2016, the U.S. Supreme Court struck down a Maryland Public Service Commission order that required LSEs to pay a new gas-fired power plant any shortfall between its clearing price in the PJM capacity auction and a price guaranteed in the “contract for differences.”⁵⁵ The Court held that this structure impermissibly “intrude[d] on FERC’s authority over interstate wholesale rates.”⁵⁶ The “fatal defect” was that Maryland’s program “condition[ed] payment of funds on capacity clearing the auction.”⁵⁷

In contrast, the Second Circuit subsequently upheld New York’s ZEC program, which (despite incorporating a forecast of energy and capacity prices into certain payment calculations) does not have an “impermissible ‘tether’” to “wholesale market participation.”⁵⁸ Even though “ZEC plants may sell the electricity they generate into the wholesale auction, and all of them may well do so,” participation in NYISO auctions is not a requirement of the ZEC program.⁵⁹ Rather, the court noted that “the production of zero-emissions energy results in the creation of ZECs; how those plants sell their electricity is a business decision that does not raise preemption

⁵⁴ White Paper at 51.

⁵⁵ *Hughes v. Talen Energy Marketing, LLC*, 136 S.Ct. 1288, 1294-95 (2016).

⁵⁶ *Id.* at 1298.

⁵⁷ *Id.* at 1299.

⁵⁸ *Coalition for Competitive Elec., Dynergy Inc. v. Zibelman*, 906 F.3d 41, 46 (2d Cir. 2018).

⁵⁹ *Id.* at 54.

concerns.”⁶⁰ That said, the court also stated that “New York has kept the line in sight, and gone as near as can be without crossing it.”⁶¹

Arguably, an Index REC mechanism standing alone would not cross this line either, given that these payments are based on “a proxy index of wholesale prices rather than the actual prices the generator receives.”⁶² Nevertheless, to further reduce the risk of litigation over preemption challenges, the Commission could preserve the availability of the Fixed REC option, which offers a payment mechanism without any link to prices in FERC-jurisdictional wholesale markets.

IX. NYSERDA Should Not Cure NYPA’s ZEC Deficit by Raiding Clean Energy Funds

The White Paper notes the problem of “uncollectible” NYPA load that has accrued a \$34 million ZEC payment deficit.⁶³ NYSERDA and DPS propose to cure this deficit “through the use of existing, uncommitted and unspent Energy Efficiency Portfolio Standard (EEPS) / Renewable Portfolio Standard (RPS) / Systems Benefit Charge (SBC) funds.”⁶⁴ As we have stated in the past, Clean Energy Advocates strongly oppose any diversion of clean energy or energy efficiency funds to subsidize nuclear energy, which is neither clean nor renewable and cannot contribute to achievement of the 70 by 30 Target. Any order to establish the CLCPA Renewable Energy Program (a program which excludes nuclear facilities from eligibility) should not cannibalize funds intended and needed to support renewable energy deployment and energy efficiency improvements.

⁶⁰ *Id.* at 55.

⁶¹ *Id.* at 54.

⁶² Order Modifying Tier 1 Renewable Procurements at 7, n.14.

⁶³ White Paper at 65.

⁶⁴ White Paper at 66.

Respectfully submitted on the 24th day of July 2020.

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