NEW YORK STATE | Department of Public Service

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January 16, 2025

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Dear Governor Hochul, Comptroller DiNapoli, Speaker Heastie, Majority Leader Stewart-Cousins and leaders of the Legislature:

In accordance with the provisions of section 170 of the Executive Law, this letter identifies the actions the Department of Public Service (Department) has taken, or will be taking, to implement the recommendations contained in the Office of the State Comptroller's (OSC) final audit report (2022-S-4) Climate Act Goals – Planning, Procurements, and Progress Tracking (Report).

OSC Recommendation 1: Begin the required comprehensive review of the Climate Act, including assessment of progress toward the goals, distribution of systems by load and size, and annual funding commitments and expenditures.

Action Plan: As required by the Public Service Law (PSL) section 66-p(3), the Department and NYSERDA began the comprehensive review of the Climate Leadership and Community Protection Act (Climate Act or CLCPA) on July 1, 2024 with the filing of the *Draft Clean Energy Standard Biennial Review* (Draft Report). The filing can be found at this link. The Draft Report focuses on New York's goal of obtaining 70% of the State's electricity from renewable sources by 2030 (the 70% goal) and the related goal of building 9 gigawatts (GW) of offshore wind by 2035. Interested parties were invited to submit initial comments on the biennial review by September 23, 2024. Reply comments were accepted until October 7, 2024. The Draft Report summarizes the progress made toward the renewable energy and zero emission goals set by the CLCPA since the establishment of New York State's Clean Energy Standard (CES), assesses what remains to be done to achieve those goals, presents policy options and proposals, and invites comments from stakeholders and the public on these or any other matters raised in the Draft Report. The Draft Report includes the following elements:

- Section 1 identifies the key regulatory actions taken to date to support renewable energy deployment in New York, including the establishment of the CES.
- Section 2 summarizes progress to date in achieving the CLCPA and CES goals in terms of current contributions of operational renewable energy systems and zero-emission sources to the State's energy portfolio.
- Section 3 offers a detailed assessment of major factors that have affected and will likely continue to affect progress towards the goals.
- Section 4 reports on the pipeline of contracted renewables from previous Tier 1 and offshore wind solicitations.
- Section 5 estimates the amount of renewable energy that would need to be procured, under the CES or a modified version of the program, to achieve the 70% goal and offers recommendations to adjust NYSERDA's procurement authorization.
- Section 6 considers other programmatic options for accelerating the development and construction of renewable energy resources.
- Appendices A and B, respectively, provide further details on operational and contracted renewable energy projects by size and technology, and the analysis of the path to the 70% goal. Appendix A also provides CES funding and expenditures for recent years through 2023.

The Public Service Commission is expected to act on the Draft Report and its recommendations in early 2025.

The Commission's history of overseeing the electric power sector left it well positioned to track progress of actions towards meeting Climate goals and the Commission has tracked and reported progress toward meeting climate goals long before the 2024 Comprehensive Review. For example, in May 2022, the Commission issued the CLCPA Initiating Order, which directed Department Staff to track and assess progress made towards meeting the CLCPA goals and provide policy guidance as necessary for additional actions needed to help achieve those goals. In July 2023, Department Staff provided the first Informational Report on Overall Implementation of the CLCPA (First CLCPA Report) to the Commission, which summarized recent efforts and outcomes in relation to several key areas of CLCPA implementation including renewable electricity and energy storage, transmission, energy efficiency and building electrification (EE/BE), and transportation. The First CLCPA Report also provided an overview of the State's progress toward achieving the goals established under the CLCPA, and reported on: the overall energy savings, energy generation, and emissions reductions across all of the Commission's CLCPA-related programs; electric and gas utility cost recoveries to date associated with such programs; and utility ratepayer impacts for the programs. The Department is currently preparing the Second CLCPA Report and anticipates presenting it to the Commission in 2025.

Outside of these required progress reports, the Department regularly reviews the performance of its various initiatives, as described below in response to OSC Recommendation 2.
In sum, the Department has not waited until the benchmark dates to determine if the sectors subject to its oversight are on track. Instead, the Department continuously examines and implements all available strategies to ensure our clean energy initiatives across virtually every sector of the State's economy are making progress. This approach, steeped in the view that through proactive planning and management, enables the Department and the Commission to pre-emptively address challenges, and in particular to address acute challenges as they arise.

OSC Recommendation 2: Continuously analyze the existing and emerging risks and known issues to ensure they are evaluated and addressed to minimize impact on the State's ability to meet Climate Act goals.

Action Plan: The Department continuously analyzes existing and emerging risks and known issues and makes adjustments to minimize their impact on our programs' performance and on the pace of progress toward CLCPA goals. The Department and Commission have long established processes to analyze, evaluate and inform the general public of emerging risks. The Department and Commission have also established processes that allow flexibility in the face of changing market conditions, incorporate stakeholder feedback into decision-making, and ensure we continue to foster the uptake of innovations and private sector investments aligned with program objectives. Additionally, the Department and Commission review the cost-effectiveness of programs on an ongoing basis and at predetermined program milestones.

The following are examples of the Commission and Department's work regarding the above:

- The Department applies an ongoing monitoring and continuous improvement approach, including through the First CLCPA Report, that includes a detailed review of annual achievements across programs. Drawing on our various analyses of our programs' performance, we identify problems and adopt adjustments to address them.
- The CES Modification Order developed revised guidance for renewable energy procurement in response to the CLCPA.

- The Coordinated Grid Planning Process (CGPP) ensures the grid infrastructure will be in place to enable the energy transition.
- The Commission adopted the Tier 1 Transition Order which implemented a load share approach to Tier 1 obligations in acknowledgement of the lack of Tier 1 RECs available and the abundance of alternative compliance payments being purchased by the State's Load Serving Entities.
- The Commission requires midpoint reviews for several programs such as NY-Sun and the EV Make Ready Program. These reviews include evaluation reports to review program effectiveness and ensure programs are achieving requirements pursuant to Commission orders and to support the state's clean energy goals. For example, in the midpoint review of the Commission's Electric Vehicle (EV) Make Ready Program (November 2023), the Commission adopted changes to the direct current (DC) fast charging program target to increase investments in disadvantaged communities and streamline program implementation.
- The Commission includes specific requirements in its orders to ensure the most effective use of ratepayer funds. An example of this is the Commission's midpoint review of the New Efficiency: New York (NE:NY) and CEF portfolios. In July 2023, the Commission adopted a strategic framework to guide the State's energy efficiency and building electrification portfolios for the 2026-2030 period. In this framework, the Commission recognized the program's success in increasing the penetration of LED lighting in New York's homes and businesses. This, along with federal standard changes, allowed funding to be transition from LED investments to other measures such as building envelope improvements or heat pump installations, which require subsidies to support customers in taking actions that wouldn't otherwise occur.
- In October 2023, the Commission denied petitions filed by renewable generators to renegotiate their contracts with NYSERDA on the grounds that cost effectiveness is best determined through the NYSERDA competitive solicitation process, not through a formulaic contract amendment process. Following this decision, Governor Hochul announced a 10-Point Action plan that Department Staff thereafter worked closely with NYSERDA to develop a 10-Point Action Plan that outlines steps the State – through the Department, NYSERDA, and other partners – is taking to support and grow the renewable energy sector. In addition, as part of the 10-Point Action Plan, the Department worked with NYSERDA to launch expedited solicitations for both land-based renewable projects and offshore wind.
- The Commission has made modifications to programs to account for available federal funding under the Inflation Reduction Act (IRA), the Bipartisan Infrastructure Law (BIL) and other federal programs and incentives. For example, in response to a June 2023 Order Adopting NY-Sun Mid-Program modifications, NYSERDA included adjusted incentives for NY-Sun downward to account for the influx of new federal tax credits available under the IRA and reduce the amount of ratepayer funding needed per project for community solar development.
- The Commission also evaluates seasonal and long-term weather trends, winter and summer gas and electric system readiness, micro and macro-economic trends and impacts, physical and electronic threats, supply chain concerns, in addition to many other risks and threats that affect current and potential future energy policies. These evaluations are presented through various Staff reports and informational presentations to the Commission, including, for example, the winter preparedness report, summer energy preparedness report, cybersecurity risk assessment report, and annual review and approval of utility emergency preparedness plans.

OSC Recommendation 3: Analyze the expected renewable energy generation [capacity] of projects that are not yet operable, taking into consideration the possibility of project cancellation (e.g., using the known historic cancellation rate) to provide a more accurate representation of the likelihood of and progress toward achieving Climate Act goals. Additionally, update the expected dates for when the projects under construction will be operational.

Action Plan: The Department and NYSERDA regularly analyze the status of renewable energy generation projects and contracts to monitor the pace of progress relative to defined milestones. In NYSERDA's capacity as administrator of the CES program, it has direct and ongoing communications with project developers pertaining to upcoming solicitations and compliance with REC contracts. Pursuant to the Commission's statutory obligations under PSL section 66-p, Department Staff engage with NYSERDA staff regarding its role as administrator of the CES program, including regular consultation regarding (i) any substantive and procedural changes underlying NYSERDA's solicitations, (ii) potential awards associated with renewables solicitations, and (iii) the awarded developers' compliance with project milestones established in RECs contracts, including those related to state and local permitting and the NYISO interconnection process. NYSERDA also keeps Department Staff apprised of supply chain disruptions impacting the delivery of renewable energy facility components, potential difficulties regarding access to capital by renewables developers, the latest market data, and attrition rates. NYSERDA and the Department review these data and trends across offshore wind, large scale land-based renewables and distributed solar.

NYSERDA and Department Staff have instituted quarterly interagency meetings to provide updates to the status of CES projects on the status of construction, anticipated commercial operations dates and any project that attrits out. Information from these discussions is used by the Department Staff to track compliance with the CES Modification Order and, in coordination with NYSERDA, determine the MWh levels of future REC procurements.

NYSERDA and the Department use a 20 percent anticipated attrition rate for projects, which is higher than the historical average of 6 percent attrition. By assuming the more conservative 20 percent attrition rate, NYSERDA and the Department factor in macroeconomic changes that may unexpectedly impact its entire portfolio.

OpenNY contains a list of every renewable generation project that NYSERDA has contracted with and its status, including the expected operational dates, etc. That can be accessed here:
https://data.ny.gov/Energy-Environment/Large-scale-Renewable-Projects-Reported-by-NYSERDA/dprp-55ye/about_data

We note that the CES is only one program that is indicative of the Commission's efforts towards the Climate Act's renewable energy goals. Other Commission and Department actions include, for example:

- The Commission has approved significant investments in transmission and distribution infrastructure pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act to facilitate greater renewable energy onto our grid.
- The Commission has launched the Coordinated Grid Planning Process to identify further transmission and distribution investments that would facilitate the achievement of the Climate Act goals at the least cost.
- The Office of Renewable Energy Siting and Electric Transmission (ORES) was integrated into the Department pursuant to the Renewable Action Through Project Interconnection and Deployment (RAPID) Act to create a one-stop-shop for the siting and permitting of major renewable energy

generation and major electric transmission projects. On December 18, 2024 ORES issued draft regulations pursuant to the RAPID Act to establish new regulations under Article VIII of the PSL for the siting of these facilities. In 2024, ORES issued four final siting permits for major renewable generation facilities representing over 600 MW of new clean energy.
- The Commission approved a new framework for the State to achieve six gigawatts (GW) of energy storage by 2030.

OSC Recommendation 4: Conduct a detailed analysis of cost estimates to transition to renewable energy sources and meet Climate Act goals. Periodically update and report the results of the analysis to the public.

Action Plan: The DPS Informational Report on Overall Implementation of the CLCPA includes, among other information, an historic look back at the costs and benefits to transition to renewable energy sources to meet the CLCPA goals. In addition, the New York State Energy Plan (SEP), which is currently being updated, will assess options for meeting New York State's future energy needs over a fifteen-year horizon (2025-2040) in a manner that ensures energy system reliability and advances economy-wide decarbonization. The SEP will include an analysis of societal benefits and costs.

OSC Recommendation 5: Assess the extent to which ratepayers can reasonably assume the responsibility for covering Climate Act implementation costs. Identify potential alternative funding sources.

Action Plan: The PSL requires the Commission to ensure that rates are just and reasonable; thus, every Commission decision considers impacts to ratepayers. The CLCPA did not change this requirement. Indeed, the provisions of the PSL that were added by the CLCPA direct the Commission to consider effects on "safe and adequate electric service" when formulating clean energy programs. The law also authorizes the Commission to suspend or modify the pursuit of clean energy targets should it become clear that such pursuit threatens to compromise safety, adequacy, or affordability of energy service. In keeping with the statute, when clean energy programs are proposed, the Commission considers costs and bill impacts. To date, all Commission orders issued to implement provisions of the CLCPA provide either or both a benefit cost analysis (BCA) consistent with the Commission's BCA Framework Order (Case 14-M-0101), issued January 21, 2016, or analysis of the potential ratepayer impacts across the State's major electric utilities. The Commission also utilizes varying methods of cost recovery to levelize the impact on rates over the life of the utilities' investments.

We note that the Commission considers affordability in all its decisions and has advanced policy and programs to specifically address affordability for low-income customers, who are disproportionately impacted by increases to electric rates. Through the Energy Affordability Policy, the Commission set a goal for low-income customers to pay no more than 6% of their household income towards utility costs. The Commission's affordability policy is advanced through a number of programs such as the Energy Affordability Program, which constitutes a monthly bill discount for low-income households; energy efficiency programs such as the EmPower+ program, which aims to reduce energy consumption in homes, leading to longer term energy burden reductions; and clean energy programs such as Statewide Solar for All, which targets low-income households in Disadvantaged Communities to provide community solar credits, which help to reduce electricity costs for participants. Beyond the initiatives specific to address affordability for low-income customers, the Commission has also advanced broader policy and programs to drive energy efficiency across sectors and income segments.

It is important to emphasize that, because the CLCPA was passed outside of the budget without any mechanism to provide funding, the only tool the Commission has at its disposal to pay for the investments necessary to transform the State's energy systems and address energy affordability is its utility rate-making power. As outlined in the First CLCPA Report, the majority of the Commission's climate investments to date related to achievement of the CLCPA are supported by utility ratepayer funds. It is critical that we work across all branches of government to find the most cost-effective solutions and funding mechanisms for meeting the goals of the CLCPA while continuing to maintain energy affordability and the reliability and resilience of our energy systems.

Rory Christian
Chair and Chief Executive Office
New York State Department of Public Service

Dated: January 16, 2025