

# Public Service Commission

## New York State Energy Research and Development Authority

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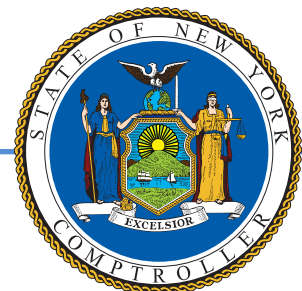
### Climate Act Goals – Planning, Procurements, and Progress Tracking

Report 2022-S-4 | July 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objectives

To determine if the Public Service Commission (PSC) and the New York State Energy Research and Development Authority (NYSERDA) adequately planned to achieve the Climate Leadership and Community Protection Act (Climate Act) goals, followed proper procurement practices for projects designed to reach the goals, and appropriately tracked and monitored progress toward meeting those goals. The audit covered the period from January 2016 through October 2023 for PSC. The audit covered the period from January 2016 through November 2021 for NYSERDA.

## About the Program

The Climate Act, effective January 1, 2020, is one of the most ambitious laws designed to address the negative impacts of climate change in the United States. The Climate Act builds on the 2015 New York State Energy Plan and the Clean Energy Standard (CES) designed to fight climate change, reduce air pollution, and ensure a diverse and reliable low-carbon energy supply. The Climate Act requires that a minimum of 70% of statewide electric generation secured by load-serving entities (entities subject to PSC jurisdiction that secure energy to serve the State's end-use customers) be generated by renewable energy systems by 2030, and by 2040, the statewide electrical demand system must be zero emissions.

The Climate Act required that PSC establish a renewable energy program and issue a comprehensive review of the energy program every 2 years. Another statute, the Accelerated Renewable Energy Growth and Community Benefit Act, directed PSC to establish new transmission planning processes and restructure or repurpose the electric transmission infrastructure as needed to meet Climate Act goals.

NYSERDA works along with PSC to achieve CES and PSC-implemented Climate Act goals, and PSC Orders provide NYSERDA with the authority to solicit production of renewable energy related to the Climate Act and CES.

The Climate Act was expected to have both fiscal and programmatic impacts on several State agencies and authorities. However, when the CES and Climate Act were passed, no State or federal funding was budgeted. Currently, almost all funding to support the CES and Climate Act programs is ratepayer based. New York State ratepayers have contributed almost \$2.6 billion to the CES program from 2016 through 2021.

## Key Findings

While PSC and NYSERDA have taken considerable steps to plan for the transition to renewable energy in accordance with the Climate Act and CES, their plans did not comprise all essential components, including assessing risks to meeting goals and projecting costs. Specifically:

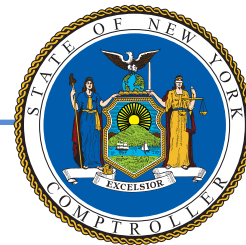
- PSC is using outdated data, and, at times, incorrect calculations, for planning purposes and has not started to address all current and emerging issues that could significantly increase electricity demand and lower projected generation, such as increased push to transition to electric vehicles by 2035 and the cancellation or delay in renewable energy projects. Between 2005 and April 2023, 12% of contracted large-scale renewable projects were canceled.

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- The costs of transitioning to renewable energy are not known, nor have they been reasonably estimated. Moreover, funding sources to cover those costs have not been identified, leaving the ratepayers as the primary source of funding. The lack of alternative funding sources adds additional risk to whether the State can meet its goals timely. Data shows utility costs have already risen sharply over the last two decades and more New Yorkers are having difficulty paying their utility bills.
  - PSC has taken steps to address some risks and issues; however, it has not yet begun to formally review progress toward Climate Act goals with updated generation and electricity demand forecasts. While PSC noted it has until July 2024 to begin this assessment, waiting until that point to fully review all efforts and costs of the transition to renewable energy increases the risk that Climate Act goals will not be met within the established time frame.

Finally, a formal backup plan has not been established in the event Climate Act goals are found to be unachievable within the prescribed time frames, other than PSC suspending or modifying the obligations under the Climate Act and relying on the continued use of fossil fuels to generate electricity until sufficient renewable electric generation is developed. However, continuing to use fossil fuels as a backup plan would delay emission reductions and increase the burden on ratepayers by forcing them to continue to support fossil-fuel generation that otherwise could be retired—including the additional cost of the infrastructure to safely transport the fossil fuels to where they will be used to generate energy.

## Key Recommendations

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



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## Office of the New York State Comptroller Division of State Government Accountability

July 16, 2024

Rory M. Christian  
Chair  
Public Service Commission  
Agency Building 3  
Albany, NY 12223

Doreen M. Harris  
President and CEO  
New York State Energy Research and Development Authority  
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Dear Chair Christian and President Harris:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Climate Act Goals – Planning, Procurements, and Progress Tracking*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, and Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

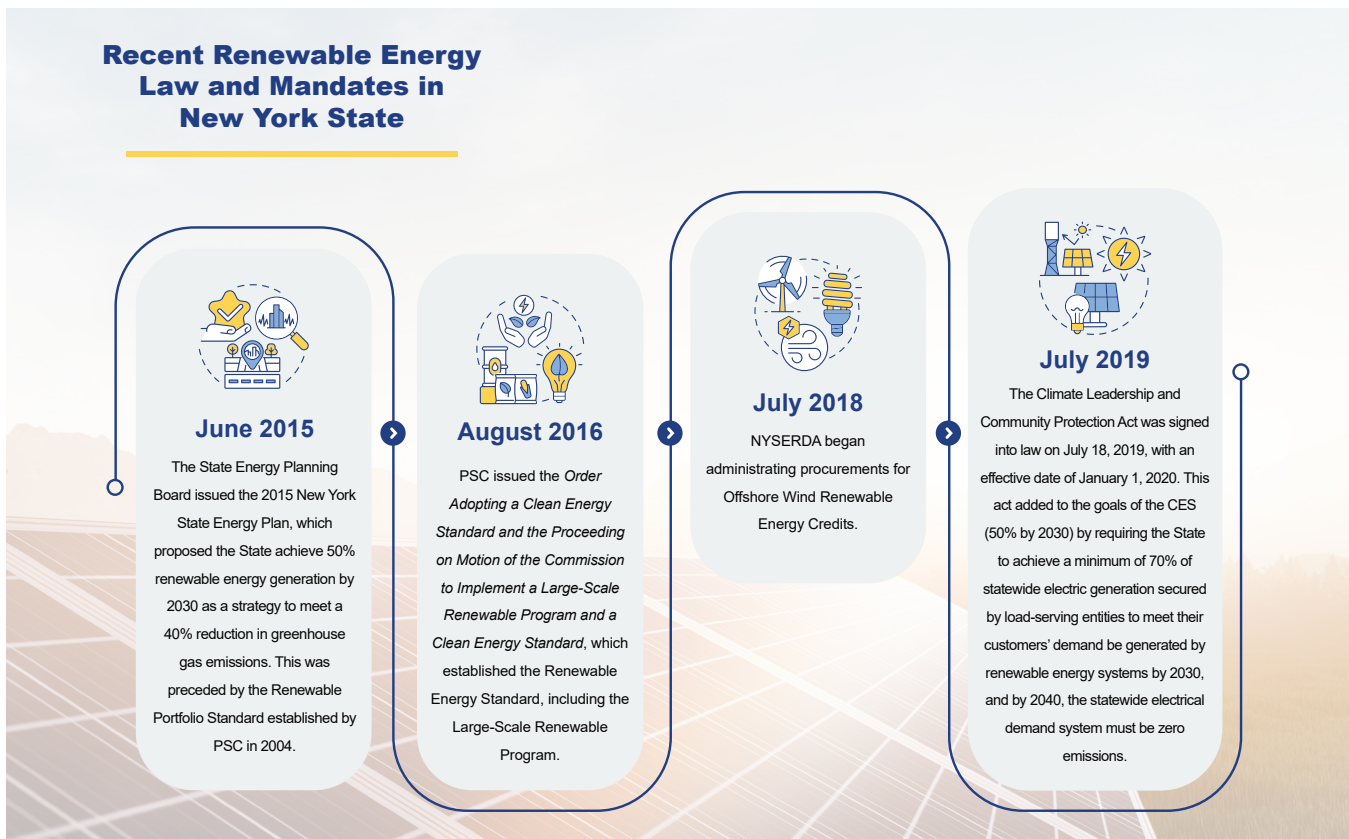
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Term	Description	Identifier
NYSERDA	New York State Energy Research and Development Authority	<i>Auditee</i>
PSC	Public Service Commission	<i>Auditee</i>
Assessment	New York Independent Service Operator's Reliability Needs Assessment	<i>Key Term</i>
CES	Clean Energy Standard	<i>Key Term</i>
Climate Act	Climate Leadership and Community Protection Act (CLCPA)	<i>Law</i>
Council	Climate Action Council	<i>Key Term</i>
DEC	Department of Environmental Conservation	<i>Agency</i>
DPS	Department of Public Service	<i>PSC Department</i>
GW	Gigawatt	<i>Key Term</i>
MW	Megawatt	<i>Key Term</i>
MWh	Megawatt hours	<i>Key Term</i>
NYISO	New York Independent Service Operator	<i>Organization</i>
OREC	Offshore Wind Renewable Energy Credit	<i>Key Term</i>
Panel	Technical Evaluation Panel	<i>Key Term</i>
PLA	Project Labor Agreement	<i>Key Term</i>
REC	Renewable energy certificate	<i>Key Term</i>
RFP	Request for Proposals	<i>Key Term</i>
ZEC	Zero-emissions credit	<i>Key Term</i>

# Background

According to the Department of Environmental Conservation (DEC), climate change in New York is causing warmer temperatures that create longer and more frequent heat waves, putting a strain on New York agriculture, energy systems, and transportation infrastructure as well as impacting the health and safety of New York's residents and negatively affecting plant and wildlife diversity. Increased precipitation is causing more severe inland flooding, and sea level rise is exacerbating flooding, erosion, and storm surge. DEC further projects that, without increased efforts to address these negative consequences, New York will continue to experience worsening environmental, economic, and social impacts from climate change.

To address the effects of climate change, the Climate Leadership and Community Protection Act (Climate Act) was passed and became effective January 1, 2020, and emerged as one of the most ambitious climate laws in the United States. The Climate Act builds on the 2015 New York State Energy Plan and the Clean Energy Standard (CES) designed to fight climate change, reduce air pollution, and ensure a diverse and reliable low-carbon energy supply (see time line below).



The CES, which was expanded in 2020 to meet Climate Act requirements, relies on three tools to meet clean energy goals: the Renewable Energy Standard, the Offshore Wind Standard, and the zero-emissions credit (ZEC) requirement.

- The Renewable Energy Standard requires load-serving entities (entities subject to the jurisdiction of the Public Service Commission [PSC] that secure

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energy to serve the State's end-use electricity customers) to obtain renewable energy certificates (RECs) for their retail customers. RECs attest that energy comes from a renewable source and are used to account for, track, and assign ownership of renewable electricity generation and use. A REC represents the environmental attributes associated with the generation of 1 megawatt hour (MWh) of renewable electricity. These attributes include, but are not limited to, avoided emissions of carbon dioxide and other greenhouse gases, plus set-aside allowances and allocations from emission trading programs made unnecessary by generating the MWh of renewable electricity.

- The Offshore Wind Standard, added to the CES in 2018, requires load-serving entities to support the procurement of 2.4 gigawatts (GW) of offshore wind resources by 2030.
- Load-serving entities must also obtain ZECs based on their proportionate amount of statewide load. Similar to RECs, ZECs are financial instruments that allow qualified nuclear generators to receive revenue associated with the zero-emissions attribute of their electric production.

The Climate Act requires that a minimum of 70% of statewide electric generation secured by load-serving entities to meet their customers' demand must be generated by renewable energy systems by 2030, and by 2040, the statewide electrical demand system must be zero emissions. For Climate Act purposes, nuclear energy isn't considered renewable energy but is counted toward the 2030 and 2040 goals as zero emissions.

The Climate Act also required that PSC establish a renewable energy program by June 30, 2021, and by July 1, 2024 and every 2 years thereafter, PSC must issue a comprehensive review of the energy program, after a notice-and-comment process. This review includes assessing progress toward the goals, the distribution of systems by load and size, and annual funding commitments and expenditures. Additionally, by July 1, 2024, PSC must establish a means to require the State's load-serving entities to procure at least 6 GW of photovoltaic solar generation by 2025, to support 3 GW of statewide energy storage by 2030, and to procure 9 GW of offshore wind electricity generation by 2035. Further, a subsequent statute, the Accelerated Renewable Energy Growth and Community Benefit Act, required PSC's Department of Public Service (DPS) in consultation with other entities, including NYSERDA and New York Independent Service Operator (NYISO), to prepare a comprehensive Power Grid 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 [Climate Act] targets." After the issuance of the Power Grid Study, the PSC must "commence a proceeding to establish a distribution and local transmission capital plan for each utility in whose service territory the power grid study identified distribution upgrades and local transmission upgrades that the department determines are necessary or appropriate to achieve the [Climate Act] targets." The PSC must also "commence a proceeding to establish a bulk transmission system investment program, consistent with the commission's siting authority in article 7 of the public service law that identifies



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bulk transmission investments that the commission determines are necessary or appropriate to achieve the [Climate Act] targets.”

According to the Climate Act, PSC may temporarily suspend or modify obligations after a hearing if it determines the implementation of the renewable energy program is impeding the provision of safe and reliable electric service, impairing existing obligations or agreements, or resulting in a significant increase in arrears or service disconnections. The Climate Act was expected to have both fiscal and programmatic impacts on several State agencies and authorities. However, when the CES and Climate Act were passed, no State or federal funding was budgeted. Currently, most funding to support the CES and PSC-implemented Climate Act programs is ratepayer based, as is all funding associated with State efforts to promote the siting of renewable electric generation. New York State ratepayers have contributed almost \$2.6 billion to the CES program from 2016 through 2021. Meanwhile, PSC’s mission is to ensure affordable, safe, secure, and reliable access to utility services for the State’s consumers at just and reasonable rates while protecting the natural environment and to stimulate effective competitive markets for clean, renewable, and distributed energy resources along with product and service innovations to benefit consumers. PSC thus must determine the rates are reasonable for both the consumer and the producer so that New York can successfully transition to the level of renewable energy it desires to achieve.

NYSERDA works along with PSC to achieve CES and Climate Act goals. It is also responsible for the integration analysis, energy and environmental research, long-term energy planning, and renewable energy procurements. To ensure NYSERDA is meeting PSC goals, Climate Act requirements, program goals, and its own goals, NYSERDA does its own monitoring and tracking and submits results to its Board and PSC. PSC Orders provide NYSERDA with the authority to solicit production of renewable energy related to the Climate Act and CES. As the central procurement administrator of the Renewable Energy Standard program, including the Large-Scale Renewable Program, NYSERDA is responsible for the procurement of RECs from projects built to produce clean energy to meet goals. In July 2018, NYSERDA began administrating procurements for Offshore Wind Renewable Energy Credits (ORECs). Each OREC represents the same attributes as a REC for the generation of 1 MWh of renewable energy, but the MWh must be generated at an offshore wind facility.

As the administrator for the Large-Scale Renewable Program, NYSERDA issues Requests for Proposals (RFPs) that specify resource eligibility, price and non-price evaluation criteria, and the number of RECs or ORECs NYSERDA seeks to procure. Per the RFPs, proposers may receive up to 70 points based on bid price and up to 30 points based on non-price categories. NYSERDA’s Technical Evaluation Panel (Panel) evaluates the non-price categories. Once the Panel members complete their individual evaluations, they meet to discuss each bid proposal, adjust preliminary scores, and agree to a final ranking for the non-price component of each proposal.

NYSERDA also evaluates the price component by determining if a proposer’s bid price exceeds the maximum price threshold for each procurement. Proposers

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that submit a bid price in excess of the maximum price threshold will not receive a contract. For the remaining proposers, the lowest bid price receives the maximum points available (70), while the remaining proposers will be awarded points in proportion to where their bid falls in the range of all bid prices. NYSERDA develops a preliminary rank and order based on the total number of price and non-price points.

Electricity is not measured until it enters the grid, and payment is not authorized or made for RECs and/or ORECs until then. Load-serving entities and NYSERDA buy RECs, ORECs, and ZECs only for the generation of MWh once a facility is operational. The State isn't directly funding the construction of renewable energy facilities, but the purchase of RECs provides financial support to projects, including the total cost of operation, which may include recovery of development costs.

The Climate Action Council (Council) is made up of individuals from several State agencies and authorities (including DEC, PSC, NYSERDA, and various other agencies and appointed members). The Council was tasked with developing a Scoping Plan (which is the State's plan to achieve the goals of the Climate Act) to reduce greenhouse gas emissions and achieve net-zero emissions, increase renewable energy usage, and ensure all communities equitably benefit in the clean energy transition. Net-zero emissions means to reduce greenhouse gas emissions and/or to ensure that any ongoing emissions are balanced by removals. While DEC must also make a significant regulatory effort, substantial effort is required by PSC and NYSERDA to implement the plan to reach Climate Act goals and objectives.

NYISO is responsible for managing New York's electric grid and its competitive wholesale electric marketplace. It does not generate power or own transmission lines, but works with power producers, utility companies, and stakeholders to provide power to meet New Yorkers' electricity needs. NYISO is charged with reliably operating New York's power grid and must meet the most stringent standards in the nation, under strict regulatory oversight from the Federal Energy Regulatory Commission. NYISO plans the power system for the future, over 1-, 5-, and 10-year studies, to maintain long-term reliability, reduce congestion on the transmission system, and address public policy needs calling for new transmission, such as lines to bring renewable resources to customers. NYISO also provides data, analyses, and information pertaining to New York's power system to policymakers, stakeholders, and the general public.

According to the Standards for Internal Control in New York State Government, strategic planning supports a good system of internal control and provides management with additional tools to help ensure that the mission of the organization will be achieved. Management should also establish a process to identify how and when plans should be changed to reflect both changing conditions and the availability of more accurate information. Monitoring is the ongoing evaluation of internal control components, either individually or as a whole system, to ascertain whether they are present and functioning. Executive managers should also monitor the existence of risks and opportunities in either the internal or external environment that might indicate the need for a change in the organization's plans. Lastly, decision-makers must use quality information to form an opinion.

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Quality information is defined as information from relevant and reliable data that is appropriate, current, complete, accurate, accessible, and provided on a timely basis and meets identified information requirements.

# Audit Findings and Recommendations

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For Climate Act implementation to be successful, the following are all essential: proper procurement, assessment of progress toward goals, development of alternate plans in the event goals are not achievable according to established time frames, reasonable estimation of costs and identification of funding sources, and identification of existing and emerging risks.

While PSC and NYSEERDA have taken considerable steps to plan for the transition to renewable energy in accordance with the Climate Act, their plans did not include all essential components. PSC is using outdated data for planning purposes and has not adequately addressed all current and emerging issues, such as increased push to transition to electric vehicles and the switch to use of electric for all residential heating and cooling, which will likely increase electricity demand significantly. Further, PSC is relying on yet-undeveloped technology that will be required to store renewable energy long term to meet 2040 goals and did not correctly take into consideration the historical cancellation rate for renewable energy contracts (between 2005 and 2023, 12% of contracted large-scale renewable projects were canceled) when projecting electricity generation estimates, increasing the risk that decision-makers are not using the most accurate information to support the achievement of program goals.

When we asked PSC officials what they were currently doing to assess issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until July 2024 and did not provide any documentation to show that they have begun assessing the State's transition to renewable energy or potential obstacles to achieving goals. However, waiting to conduct a formal assessment of all efforts and costs of the transition to renewable energy might leave too little time to sufficiently plan to meet the Climate Act's ambitious goals.

Additionally, the costs of transitioning to renewable energy are not known or have not been reasonably estimated by PSC, nor has PSC verified the cost estimates developed by other entities that they use for analyses. Further, funding sources to cover those costs have not been identified, leaving the ratepayers as the primary source of funding. According to data from the U.S. Energy Information Administration, utility costs have already risen sharply over the last two decades. Governor Hochul issued a press statement in March 2022 about efforts her administration is taking due to the high number of New Yorkers having difficulty paying their utility bills.

Further, a formal backup plan has not been established in the event that Climate Act goals are found to be unachievable within the prescribed time frames, other than PSC suspending or modifying the obligations under the Climate Act and relying on fossil fuels. However, the default plan to rely on fossil fuels not only fails to address Climate Act goals, but it also means that, in addition to maintaining and growing the existing infrastructure for the transmission of renewable energy, the infrastructure for safely transporting fossil fuels must be maintained, which also may present costs to ratepayers.

Lastly, while we found that, overall, NYSEERDA's procurements followed the Orders issued by PSC, areas of the procurement process could be improved. Our sample

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review of large-scale renewable projects found that NYSERDA did not always fully document the rationale for scores awarded to proposers or for scores that deviated from the established guidelines. While NYSERDA asserts that all scores were appropriate, documenting the rationale is important for explaining decisions to bidders that did not win projects. When information that supports the evaluation and scoring of the proposal is not documented during the evaluation, the basis for important decisions could be lost and NYSERDA might not be able to adequately support that the appropriate contracts were awarded.

## Climate Act Planning and Progress

PSC and NYSERDA have taken considerable steps to plan for Climate Act implementation, but insufficient analysis of the impact of emerging issues and other factors could have an effect on the implementation of Climate Act goals.

### Planning and Assessments

NYISO is responsible for managing New York's electric grid and its competitive wholesale electric marketplace and for conducting comprehensive long-term planning for the State's electric power system. After the Climate Act was signed into law, NYISO was asked to provide relevant information on the grid's ability and readiness to handle the additional capacity within the Climate Act's time frame. According to NYISO, after the Council was created, NYISO met with the Council and provided relevant information. However, NYISO said this information was not used in establishing the Climate Act goals or time frames for implementation.

Nonetheless, NYISO officials stated that the grid is on track to be able to handle the Climate Act goal of 70% of the State's electric needs generated from renewable sources by 2030 based on the production data reported by PSC and NYSERDA. However, meeting the Climate Act's 70% goal by 2030 is contingent on the provided data being complete, accurate, and updated. PSC's most current projections of energy demand and generation were completed in 2020 based on 2019 data, meaning the data and projections are, therefore, outdated in terms of recent legislation and regulations that may increase electrical demand, including:

- A September 2022 regulation to eliminate the sale of new passenger cars, pick-up trucks, and SUVs that are not zero-emission vehicles by 2035.
- The 2022 Environmental Bond Act funding green building projects for State-owned buildings and public schools.
- 2023 legislation prohibiting the installation of fossil fuel equipment and building systems in certain new buildings beginning in 2026.

Further, we reviewed and discussed the projections with PSC officials, who also agreed that they contained calculation errors—the most notable being the allowance for a 0.2% capacity cushion to mitigate the risk of project cancellations instead of the intended 20%. When further questioned about these calculation errors, PSC officials stated the spreadsheet originally provided was not support for their application of

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the 20% capacity cushion. Additionally, DPS provided a PowerPoint presentation on the projections to PSC, but this also contained errors related to the Climate Act goals. PSC already does projections of energy demand every 6 months to help identify peak demand during summer and winter months, but does not utilize those projections to update the analysis of projected consumption versus projected supply of renewable energy. Decision-makers need accurate, complete, and current data to make the best decisions; without it, it is less likely that Climate Act goals will be achieved, especially within the currently required time frames.

As part of its duties, NYISO prepares an annual Reliability Needs Assessment (Assessment) that evaluates electric system reliability according to resource adequacy and transmission security criteria. The 2022 Assessment evaluated the reliability of the New York bulk electric grid from 2026 through 2032, taking into consideration forecasts of peak power demand, planned upgrades to the transmission system, and changes to the generation mix over the next 10 years. While the Assessment did not find any long-term actionable reliability needs for the New York State Bulk Power Transmission facilities, significant shifts are expected in both the demand and supply sides of the electric grid due to New York State clean energy policies and goals, such as the electrification of buildings, restrictions on fossil fuel use in certain new buildings, and increased requirements to get more electric vehicles on the road—as, by 2035, only new passenger cars, pick-up trucks, and SUVs that are zero-emission vehicles will be able to be sold in New York. These shifts will affect how the current power system is planned and operated.

Within its 2022 Assessment, NYISO states that the New York City area faces the greatest reliability risk due to limited generation and transmission to serve forecasted demand. The reliability reserve margins within New York City may not be sufficient, even for expected weather conditions, if forecasted demand in the City increases by as little as 60 MWh in 2025—if the approved (but not yet operable) Champlain Hudson Power Express line to bring electricity from Quebec to New York City experiences a significant delay or there are additional generator deactivations beyond what is already planned. In 2023, NYISO reported that the peak daily load in NYC was 10,372 MWh on September 6.

While the potential risks and resource needs identified in the analyses may be resolved by new resources coming into service, construction of additional transmission facilities, and/or increased energy efficiency and integration of demand-side resources, this illustrates the potential issues that could result from lack of planning to proactively address risk and other issues. The current plan to address these issues is to keep “peaker plants” (fossil fuel power plants that grid operators generally call upon only at times of high demand) operating until the Champlain Hudson Power Express project is completed. However, these peaker plants generally come at a higher cost, both monetarily and environmentally.

It is also important to note that there is not just one plan guiding the State to achieving the goals of the Climate Act. There is a complex coordination of several plans and programs to accomplish this ambitious target.

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## Energy Storage and Transmission Constraints

NYISO officials stated that they believe the 2030 Climate Act goals might be achievable. NYISO also stated that the 2040 goal will be far more difficult to meet and that a technology that has not yet been developed or approved will be necessary to achieve that goal. According to NYISO's 2022 Power Trends report (a publication that summarizes key grid issues), NYISO concluded that the grid of the future will require significant amounts of on-demand, zero-emission, flexible resources that can account for the weather-related intermittency of renewables. Another challenge to future grid planning is the constraints of the existing transmission system, which limit the ability to deliver renewable energy to consumers. Additional transmission capability would maximize the potential contribution of these renewable resources to meet electric demand and achieve public policy goals. However, this additional transmission capability needs to be planned, constructed, and put into service in a timely manner, which could be a difficult task—even with the progress PSC and NYSERDA have made with planning—as any delays could significantly impact reaching the Climate Act goals in the established time frames.

According to PSC, fossil fuel resources will primarily be used for reliability until on-demand emission-free resources become available as effective replacements. NYISO reports that current dispatchable emission-free technologies under development include green hydrogen and renewable natural gas. These resources must have long-term energy output capabilities and the ability to be dispatched immediately for extended time periods, and would need to be developed and deployed on a large scale well before 2040. Currently, storage capacity for renewable energy is short term (i.e., 4 to 8 hours according to the 2020 Energy Storage Annual Report), and NYISO experts don't believe this will be rectified in the short term. As PSC said at the beginning of the audit, it can procure and generate energy, but it's worthless if it can't go on the grid. Long-term energy storage is necessary when relying on intermittent weather-dependent renewable energy sources. This need means the State's emission-free electricity system must not only produce enough power to meet demand but must also provide sufficient charging capability to meet the large amount of storage required. The risk of failing to meet Climate Act goals increases when having to rely on an undeveloped technology that might take years to advance to its ultimate usable form. The State has taken steps to increase the amount of energy that can be stored for future use, but the issue of how long that energy can be stored is the most limiting factor.

## Project Cancellations

Project cancellations have already slowed progress toward meeting Climate Act goals. Per NYSERDA reporting, between 2005 and 2023, 28 projects totaling 1,319 MW were canceled—12% of contracted large-scale renewable projects. PSC officials stated they included a 20% capacity cushion to mitigate project cancellations. However, this 20% capacity cushion only applies to Tier 1 projects, which are the expected source of less than half of the renewable energy procured to meet the 70% Climate Act goal. Therefore, this cushion may not be sufficient to cover the

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historical project cancellation rate. Not correctly factoring in the potential cancellation of projects deprives decision-makers of the best or most accurate data on which to base important decisions.

As of July 2023, NYSERDA had executed four contracts for offshore wind generation to produce 4,230 MW of renewable energy. NYSERDA issued the first RFP to procure ORECs over 5 years ago on November 8, 2018. However, due to a variety of delays, generators have not produced a single OREC. In early June 2023, the developers responsible for constructing New York's offshore wind projects filed a petition with PSC seeking inflation adjustments to contracts already in place. This petition was denied by PSC in October 2023. One generator, a party to a joint venture, sold its stake in the project. Two other projects resubmitted bids under the 2023 solicitation for offshore winds projects and were provisionally awarded contracts. The amount of energy they proposed to provide (between 1.65 GW and 1.82 GW) was the same, but the price increased over 30% and the projects' operational dates were pushed back from 2024 to 2026. Additionally, as of April 2024, it was announced that three other offshore wind projects totaling over 4 GW of capacity that were provisionally awarded under the 2022 solicitation could not reach a final agreement and will not be entering into a contract. Such projects also face public opposition for various reasons, which can cause significant delays. A large portion of New York City's renewable energy is expected to come from offshore wind, so these issues could dramatically affect the achievement of Climate Act goals and will impact ratepayer costs.

## Expiring Contracts and REC Price Agreements

When contracts for renewable energy sources were first approved, some sources were contracted for a 10- to 20-year span. After the contracts expire, facilities will need market revenues to support continued operation, and this is understood by facility proposers upon application. Revenue could come from wholesale market sales, or facilities would be free to contract with any individual energy consumer for both energy and RECs at an agreed-upon price. When contracts expire, there is no guarantee that the energy produced by those New York facilities will stay in New York, threatening Climate Act goals. Between 2007 and 2029, 81 contracts expired or will expire with a production capacity of 1,431 MW and a bid quantity (the amount of energy the contractor commits to generating for the contract) of 4.8 million MWh. To put this in context, New York's average annual electricity consumption from 2018 to 2022 was 154.4 million MWh. Consumption is expected to steadily increase every year and reach 204.0 million MWh by 2040. This could lead to New York paying more than the originally contracted price once the contracts expire because of additional competition for that renewable energy and RECs. Again, these potential situations should be factored into the determination of whether New York will meet Climate Act goals.



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## Other Issues Affecting State's Ability to Meet Goals

Several additional existing and emerging issues that may affect New York's ability to meet Climate Act goals should be considered, including:

- Severe weather dangers are becoming more common, and they affect renewable energy electric systems/grids. The State is not immune to such events, which could lead to greater electricity demand and more forced outages than currently forecasted. Heating and cooling needs in the State make it increasingly important for energy to be available during peak demand times. According to the National Centers for Environmental Information, between 1980 and June 2024, there have been 90 confirmed weather/climate disaster events with losses exceeding \$1 billion each in New York. The 1980–2023 annual average is 1.9 events, with the annual average for the last 5 years (2019–2023) at 4.4 events. The increasing risk of severe weather puts the availability of necessary electricity in jeopardy during and after these events, especially with growing supplies of intermittent generation that may not be available when needed.
- California is, at times, able to generate enough renewable electricity to cover 100% of its demand. However, because of the inability to store renewable energy long enough to use it as an on-demand source—a challenge New York also faces—California is still reliant on fossil fuels to produce the energy necessary to meet demand. Sometimes, because of timing, there isn't enough energy to meet peak demand. Despite California adding more renewable energy, it is still having issues during peak demand times, which has led the state to ask residents not to charge their cars or lower the temperature on their air conditioning.
- New York has approved the Champlain Hudson Power Express line to bring electricity from Quebec to New York City. However, there are concerns this hydroelectric power might not be available during the winter months because Canadian needs take priority over New York's. This means that as New York increases its winter electric demand by increasing the electrification of building heating systems, it will need to find additional sources of emission-free electricity. Further, more recent studies show that Quebec's surplus of electricity could be eliminated as soon as 2033 by increasing demand within the province, a situation that could undercut New York's ability to rely on this source of electricity. Hydro-Quebec (the utility generating and selling this energy) is searching for ways to increase its renewable energy production.
- Recently enacted or proposed legislation could have the potential to increase electric demand in New York State. This includes the requirement to transition to zero-emission vehicles and the electrification of housing. If Climate Act goals are not reached, fossil fuels will continue to be used to produce the necessary energy. This would either put increased pressure on the aging infrastructure or increase costs even more to maintain the fossil fuel infrastructure. Further, this could potentially continue the negative effect on the environment, as fossil fuels would be needed to produce the additional electricity.

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- Replacement of solar panels and wind turbines at the end of their useful life ensures the continuation of renewable energy. However, delays could result from supply chain issues as well as availability of materials, leading to lower generation of renewable energy.

While PSC is not solely responsible for ensuring the State is prepared to meet Climate Act goals, as the entity tasked with establishing and reviewing the State's renewable energy program, PSC should discuss the potential effects of these issues with the agencies responsible for ensuring a smooth transition and should ensure all parties are aware of the impacts to their area of responsibilities. PSC should then determine the effect these concerns could have on energy demand and include that information in its projections to provide the best possible chances of meeting Climate Act goals.

## Gap Between Renewable Energy Projections and Current Generation

As of November 2021, the State needed to more than double its renewable energy generation to meet the 70% by 2030 goal. According to data from the U.S. Energy Information Administration, for November 2021, total net electricity generation in New York was 10,096 thousand MWh, of which about 30.1% (3,039 thousand MWh) came from renewables with another 23.6% (2,383 thousand MWh) from nuclear. (For the purposes of the Climate Act, nuclear energy isn't considered renewable energy but is counted toward the 2030 and 2040 goals as zero emissions.) The single largest source of electricity (45.7%) came from natural gas.

The Council's Scoping Plan anticipates annual electricity demand will more than double by 2050, depending on the scale and timing of electrification and whether there are other clean alternatives for the transportation and building sectors. The increase in demand is due in part to changes or expected changes in the electrification of buildings and transportation.

According to Open NY, as of April 2023, there were 230 total large-scale renewable projects (facilities) awarded within the Climate Act program. Twenty-eight of these projects were canceled at various stages, leaving 202 facilities. Of these, only 40 (20%) were operational. As of April 2023, Open NY listed 101 (50%) as under development; however, this status can mean anything, including a contract with final terms still being negotiated, a contract without final site approval, a developer still finalizing financing, or actual construction. Finally, 61 projects (30%) were listed as completed and the contract duration for RECs had ended. Currently, less than 6 years remain until 2030 to finalize all these projects to meet the 2030 goal and, on average, it takes 5 years to complete a large-scale renewable project. See Table 1 for details.

**Table 1 – Large-Scale Renewable Project Status as of April 2023**

Category	Description	Project Status
Tier 1	Primary method for acquiring renewable energy	114 total projects with 20 (18%) operational
Tier 2	Baseline resources: facilities already in the generation stage, but upgrades or repairs may be needed. May be competitive or maintenance based.	13 total projects with 6 (46%) operational
Tier 3	ZECs are related to nuclear power generation	No new projects
Tier 4	Renewable energy into New York City	2 total projects with 0 operational
Offshore Wind	Related to offshore wind	4 total NYSERDA projects with 0 operational (Long Island Power Authority has 1 additional project under construction)

Note: This chart details only the projects using the Tier system (133) that we discuss throughout the report. The other 69 projects were in place before the Climate Act and are not in a Tier.

New York has a long way to go to meet its renewable energy goals, complicated by failure to use the most accurate data available for demand forecasts and the history of project cancellation in planning. The goals may be more difficult to achieve given the challenges presented by New York City energy needs and the obstacles involved in the transmission of renewable energy to the City.

PSC has taken some steps to address these issues, such as using the Power Grid Study and Accelerated Renewable Energy Growth Act to implement the transmission plan, which led to the approval of several transmission projects to ensure the electric grid is ready to meet the growing electricity demand. Further, PSC officials stated they included a 20% cushion to address project cancellations. However, this 20% capacity cushion only applies to Tier 1 projects, which are the expected source of less than half of the renewable energy procured to meet the 70% Climate Act goal. While PSC has taken actions to examine and resolve issues, more actions and planning are necessary. PSC must ensure construction time lines are accurate and that the facilities will be able to produce the amount of electricity they are contracted to provide.

When we asked PSC officials what they were currently doing to assess the risks and impacts of current and emerging issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until 2024 and did not provide any documentation to show that they have begun assessing the State’s transition to renewable energy or potential obstacles to achieving goals. Further, PSC has stated that:

For those efforts overseen by the PSC, we apply an ongoing monitoring and continuous improvement approach that includes a detailed review of annual achievements made under every applicable effort, followed by recognizing and acting on any necessary changes moving forward. The Department and Commission have established successful processes that allow us to be

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flexible to changing market conditions, incorporate stakeholder feedback into its decisions, and ensure we continue to take advantage of innovation and leveraging of private sector investments. In sum, we are not waiting until the benchmark dates to determine if the goals are achieved. Instead, we are taking action now to mitigate the risk of not meeting any of the statutory deadlines set forth in the CLCPA [Climate Act], including a multifaceted strategy where we are implementing clean energy initiatives across virtually every sector of the State's economy.

While the Climate Act does not require PSC to formally assess these impacts until July 2024, at that point it might be too late to make sufficient changes to meet the established goals. PSC stated it does evaluate the performance and cost of specific renewable energy programs, but this is not done for all efforts and costs of the transition to renewable energy. Undertaking a project without identifying and assessing potential risks, including estimating the costs to complete that project, increases the risk that the project's goals will not be successfully achieved.

In October 2023, the Executive announced a 10-point plan with steps that address some of the issues cited above regarding Climate Act planning. For example, the plan indicates NYSERDA would announce "historic awards" of renewable energy projects and expedite the assessment of the impacts of the Large-Scale Renewable Program and the projects' ability to meet obligations, and the State will otherwise seek more public engagement, expand the offshore wind supply chain, build out transmission infrastructure to connect Long Island with the rest of the State, and seek federal support in the form of offshore wind tax credits and revenue sharing with other states.

Additional proactive steps to improve project planning would improve the State's chances of meeting ambitious Climate Act goals, and identifying potential problem areas as early as possible would leave more time to pursue alternative strategies for implementing renewable energy.

## **Incomplete Cost Assessment and Ratepayer Burden**

In addition to ensuring a sufficient supply of renewable energy and the electric grid's ability to handle the transmission of renewable energy, successful implementation of the Climate Act requires recognition of the cost to achieve and maintain these goals. PSC emphasizes that the consideration of cost was not required in the Climate Act, nor were any sources of funding identified in it. The only source of funding available for PSC comes directly from the ratepayers. A report from the Council indicated that implementing and meeting Climate Act goals will cost between \$280 and \$340 billion. The Council has also estimated the benefits of the Climate Act to be between \$420 and \$430 billion, with roughly half of the presumed benefits coming from global reductions in harm caused by climate change. During the 2022 budget process, about \$559 million was allocated. However, this money was not used to offset the cost of procuring renewable electricity for ratepayers, but instead was used for other

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clean energy programs such as the electrification of building systems and to promote and improve energy efficiency in schools.

PSC Orders show that stakeholder feedback was solicited and reviewed after the Climate Act was enacted and that those Orders authorized funding for the CES and Climate Act to be borne by the ratepayers. However, at least one PSC Commissioner stated the cost of the renewable energy conversion is greater than the capacity to finance it through ratepayers.

Compared to the 50 states and the District of Columbia, New York had the ninth highest price for electricity, at 21.2 cents per kilowatt hour (kWh) as of November 2022. Ten states have a price above 20 cents per kWh, including northeastern states such as New Hampshire, Massachusetts, Connecticut, Rhode Island, Maine, and Vermont. However, during the roughly 6-year period between the adoption of the CES in 2016 and September 2022, the average electricity prices in New York increased by 45%, while the average electricity price across the U.S. has only increased by 36%. This is not to imply that the CES is the sole contributor to increasing electric rates, but to show that electric prices are increasing substantially, which should be a concern for PSC.

Prior to the COVID-19 pandemic, there were almost 1 million customers in the State with unpaid utility bills, totaling over \$800 million. As of March 2022, that number was 1.2 million customers, owing a total of \$1.8 billion. While some of this can be attributed to the pandemic and the State's moratorium on energy shutoffs, some can also be attributed to the rising cost of utility services and supply. Most of these unpaid bills are being paid for by the remaining ratepayers through a surcharge on their utility bills or by State taxpayers through on-budget funding approved by the Executive and Legislature to assist residents and small business customers with the bills in arrears. Further, the Enacted Budget for State Fiscal Year 2023-24 included a provision to hold to 6% of household income the electric bills of low-income customers who participate in State programs to electrify home heating and appliances and undertake efficiency upgrades.

As New York pursues clean energy programs to fulfill the obligations of the Climate Act, it is imperative to identify sources of funding other than increased utility rates to mitigate impacts on ratepayers. Relying primarily on customer rate assessments to pay for these programs may increase the number of utility customers in arrears on their utility bills and/or Climate Act goals will not be met timely due to the lack of availability of resources.

The 10-point plan announced in October 2023 indicates that cost savings realized through federal support may be shared with ratepayers; however, PSC may need to pursue additional ideas to address expected rate increases as the State pursues Climate Act goals.

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## Reliance on Fossil Fuels

PSC asserted that New York is on track to reach the 2030 goal of 70% of the State's electric needs generated from renewable sources. However, this depended on the renewable energy projects under contract being completed in a timely manner and operating at or near capacity and on no other issues arising, such as an unforeseen or unplanned spike in demand or contracts being canceled (or the entity being otherwise unable to fulfill its obligations under the contract). In DPS's Draft Clean Energy Standard Biennial Review issued July 1, 2024, DPS states that it is behind in projects to achieve the 70% goal by 2030, which is now projected to be achievable in 2033.

When asked what the plan is in the event that Climate Act goals cannot be achieved, PSC responded:

The Clean Energy Standard (CES) programs fund the addition and continued operation of eligible technologies and does not require the retirement of the existing firm generators. It should also be noted that the CLCPA [Climate Act] provides the Commission with the authority to suspend or modify the CES (referred to as the "Renewable Energy Program" in the CLCPA – Section 4, Public Service Law § 66-p) if it determines the programs "impedes the provision of safe and adequate electric service." Therefore, if the reliability planning processes described above identify an emergent or imminent reliability concern, the Commission has the legal authority to temporarily suspend or modify the CLCPA programs where necessary.

We also note that there are current requirements in place for dual [sic] fuel/interruptible customers in utility tariffs to ensure that backup fuel supply is available in the event of any supply disruptions/outages. Similar requirements will be developed as needed though the statewide gas planning proceeding as we continue to transition the gas system to meet the CLCPA goals.

While PSC noted it can simply suspend or modify requirements of the renewable energy program to maintain a safe and adequate electric supply, that does not come without consequences, including potential additional increases in the cost of electricity. Further, the default plan is to rely on fossil fuels. This means that, in addition to the costs of incentivizing new renewable generation and building new required transmission infrastructure, fossil-fuel generation must be kept available, which may increase costs to ratepayers. Again, this adds to the growing costs of the transition, which so far have been almost totally borne by the ratepayers.

Undertaking a project without knowing the costs increases the risk that the project will not succeed. The absence of cost estimates also makes it difficult, if not impossible, to assess its impact on New Yorkers, including those who are currently struggling to pay their utility bills and who have faced rising costs over the past two decades. PSC officials stated that they expect the cost for renewable energy to decrease as time goes on, but that is not a certainty at this point. Further, PSC has not established a time line for decreasing costs of renewable energy.

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## Procurement Process Inconsistencies

Regarding the Large-Scale Renewable Program, NYSERDA issues RFPs that specify resource eligibility, price and non-price evaluation criteria, and the number of RECs or ORECs NYSERDA seeks to procure.

We reviewed projects in four of the five areas for which NYSERDA issued RFPs for procurement: Tier 1 - Primary method for acquiring renewable energy; Tier 2 - Baseline resources: facilities already in the generation stage, but upgrades or repairs may be needed (competitive or maintenance based); Tier 4 - Renewable energy into New York City; and Offshore Wind. We did not review projects for Tier 3, as ZECs are related to nuclear energy generation, and nuclear energy is not considered to be renewable for the purposes of the Climate Act, although it is counted as zero emissions.

Overall, we found that NYSERDA's procurements followed the Orders issued by PSC. However, we found NYSERDA did not always ensure the guidelines used from the RFP complied with internal procurement guidelines, and areas of the procurement process could be improved. During our review of the large-scale renewable projects, we found the rationales provided for the scores awarded to proposers and for scores that deviated from the established guidelines were not fully or consistently documented. While NYSERDA asserts that all scores were appropriate, documented rationale is important for explaining decisions to bidders whose proposals were not selected. When information that supports the evaluation and scoring of the proposal is not documented during the evaluation, the basis for important decisions could be lost and NYSERDA might not be able to adequately support that the appropriate contracts were awarded. NYSERDA did not follow certain aspects of its internal procurement guidelines when developing the RFPs, with instances of vague scoring guidance that could have led to inconsistent scoring of proposals.

During Tier 1, Tier 4, and Offshore Wind procurements, evaluators review and score proposals and identify a preliminary award group. A Panel of NYSERDA and DPS senior management then conduct a portfolio risk assessment of the preliminary award group, reach a final consensus score through discussion, and select the final award group for the procurement. If the Panel determines non-standard evaluation practices led to an anomaly in results, they may request the evaluators review and resubmit scores, if necessary. Ultimately, the Panel approves the final results and award contracts.

Our review of Tier 1 procurement RFPs issued in 2017 and 2018 found they did not fully comply with NYSERDA's internal procurement guidelines. NYSERDA produced emails explaining that the internal scoring guidance was found not to conform to the RFPs (the public-facing source of authority on how scoring should be performed) and that it deemed a change was necessary. After extensive discussions, NYSERDA used the RFP guidelines to score the proposals received in response to the 2017 and 2018 RFPs but did not officially amend the internal procurement guidelines until

2019. The discrepancy involved NYSERDA averaging the scores awarded by each evaluator in this category to conform to the RFPs' language instead of using the sum of ranks to calculate and award final scores, as required by the internal guidance.

NYSERDA's scoresheets include reference scores (suggested score based on meeting specific evaluation criteria, which NYSERDA provides to evaluators via procurement scoring sheets) and a matrix based on RFP guidance to help Panel members adhere to the evaluation methodology. Both the scoresheet and scoring guidelines allow Panel members to deviate from the reference scores up to the maximum allowable score in each project's subcategory. See Table 2 for scoresheet subcategory descriptions.

**Table 2 – NYSERDA Scoresheet Subcategories**

<b>Subcategory</b>	<b>Description</b>
Project Viability	Considers a series of factors that demonstrate whether the proposed project can reasonably be expected to be in service on or before the proposed commercial operation date.
Operational Flexibility and Peak Coincidence	Evaluates a generation facility's ability to produce energy at times and in locations where production can be problematic, and the facility's ability to mitigate future system integration burdens.
Incremental Economic Benefits	Evaluates the amount and type of economic benefits to NY which as the result of an REC contract and that would not have accrued but for the award of a contract.
Percent of Site Control	Evaluated according to the proportion of the project and interconnection site under a proposer's control through ownership, executed lease or executed binding option for ownership or lease, and the progress towards right-of way control the proposer has achieved through ownership, executed lease, or executed option.
Resource Assessment	Evaluates the level of progress in assessing the quality and accessibility of the renewable resource for the proposed bid facility.
Project Labor Agreement (PLA)	Considers the proposer's commitment to entering into a PLA and whether the PLA covers all necessary infrastructure.

According to the guidelines, deviation from reference scores should occur only when evaluators disagree with underlying data provided by the proposer, and evaluators must provide a rationale for any scoring deviation. However, neither the guidelines nor the scoresheets explained the number of fractional points (tenths and/or hundredths of a point awarded when evaluators believe a proposer has met and surpassed the criteria for the lower of two reference scores and has not met the criteria for the higher of the two reference scores) an evaluator should award when deviating from a reference score.

From the four project areas, we reviewed the 48 scoresheets that six evaluators completed while evaluating the eight proposals included in our review and found:

- 23 (5%) of the 432 scores awarded for Project Viability deviated from reference scores.
- Evaluators failed to provide sufficient rationale for 20 (87%) of the 23 deviations.



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- 15 of the 23 deviations did not express disagreement with the underlying data, although all reviewer and consensus notes included related commentary in varying degree of detail.

We also identified variability in scores created by vague and easily misinterpreted scoring guidance in two scoresheet subcategories. We recognize that these scoresheets record preliminary individual scores that inform the Panel's final consensus score, which is reached through discussion, but this issue reflects a need for further clarity in NYSERDA scoring guidance. For instance, while evaluating the Percent of Site Control subcategory, six evaluators awarded two different scores using two different interpretations of the scoring guidance.

Similarly, NYSERDA provided vague scoring guidance for the Resource Assessment subcategory. The RFP established a minimum threshold and a standard for the subcategory. The scoresheet instructed evaluators to use professional judgment to award a score within a specific points range to determine if the proposer had an assessment done determining the availability of the resource (sun or wind) to produce renewable energy. While one evaluator believed the proposer had met the criteria for receiving one point, the other five evaluators awarded a different score.

In accordance with the relevant PSC orders, the RFP also allowed proposers to earn up to 10 points for the Project Viability subcategory and up to another 10 for the Operational Flexibility and Peak Coincidence subcategory. The evaluation protocol for the procurement required Panel members to evaluate and score the non-price components of each proposal. Once Panel members completed their individual evaluations, they met to discuss the scores awarded to each proposal. The award model used Panel scores to generate a total score for each proposal, which NYSERDA converted to points. Our review of NYSERDA's scoring of the Project Viability and Operational Flexibility and Peak Coincidence subcategories found that it calculated both scores by summing the average of the Panel scores (not the consensus scores) awarded in each subcategory and failed to convert the scores to points using the award model, as required by the guidelines. This could change the score the proposer received for this subcategory, which could potentially change the ranking. However, NYSERDA asserts that this did not occur in this instance. NYSERDA acknowledges that it populated the award model using the individual reviewer's scores within the Incremental Economic Benefits subcategory, and that the scoring committee also made consensus decisions on the dollar amount of benefits that informed consensus scores but disagrees that this was out of alignment with the scoring guidance. However, NYSERDA agrees that the process by which Panel members provided final scores to award economic benefit scores in accordance with the established guidelines could have been clearer. The process of translating eligible economic benefit dollars to a points score was completed, but the process would benefit from a clearer description in the guidelines and clearer sequence of scores resulting in a final consensus score in the award model.

We did not have any findings for our review of Tier 2 projects. For Tier 4, we reviewed one successful proposal from the 37 proposals from the award model and determined the evaluators did not fully document support for five (25%) of the

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20 factors for Project Viability and Operational Flexibility and Peak Coincidence subcategories evaluated. NYSERDA management asserts that the consensus score supports the final score given but agreed more documentation is needed regarding how the Panel reached that consensus. Additionally, NYSERDA management stated that they reviewed these instances of unsupported scores and determined the correct score was given. However, the documentation supporting the score should have been recorded at the time the scorers reviewed the proposal. This would not only document the basis for their score but would aid NYSERDA when it communicates results with unsuccessful proposers.

NYSERDA also provided vague scoring criteria for evaluators to use while evaluating the Project Labor Agreement (PLA) subcategory. The guidance required evaluators to award points depending on the specificity of the documentation provided and extent of the commitment made to a PLA. However, the guidance provided did not explain the difference between, for example, an affirmation of intent and a firm commitment to enter into a PLA, nor did the guidance specify whether letters of intent demonstrate an affirmation or a commitment.

We found evaluators interpreted and applied the PLA criteria inconsistently. For example:

- Three of the six evaluators awarded different points based on review of the same information in the proposal. One evaluator commented the proposer was committed to PLAs across the entire project, while the two evaluators commented that a statement in the proposal, “we will require ... to negotiate and sign a PLA,” demonstrated a firm commitment.
- One evaluator awarded the number of points appropriate for providing an affirmation of intent, even though this evaluator determined the proposal did not reference PLAs.
- One evaluator mentioned letters of intent to execute PLAs but awarded 0 points.
- One evaluator awarded the points appropriate for a proposer who provided memoranda of understanding to execute a PLA without comments or an explanation.

NYSERDA acknowledged that the guidance could have been clearer and stated it would better define PLA scoring guidance should another Tier 4 solicitation be issued in the future. However, NYSERDA stated that any inconsistencies regarding scoring guidance interpretation among individual evaluator scores did not affect the scoring committee consensus scores that counted toward project selection because, as part of scoring committee sessions, the scoring committee adopted consensus scores based on shared and consistent interpretation of the guidance.

PSC issued its Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement in July 2018. This Order adopted the goal of procuring ORECs associated with 2.4 GW of offshore wind capacity by 2030 and authorized NYSERDA to implement Phase 1 of the program. Phase 1 required the procurement of ORECs

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associated with approximately 800 MW of offshore wind to be contracted in 2018 and 2019. Accordingly, NYSERDA released an RFP on November 8, 2018 to procure ORECs produced by one or more offshore wind generation facilities located in the ocean waters of the United States and evaluated proposals based on price and non-price factors.

We compared the 20 consensus scores (20 categories for three different projects) awarded to three proposers for offshore wind projects to the scoring guideline guidance and determined that support or basis for the consensus scores was not fully documented in 12 of the 60 scores. Although NYSERDA stated that it, in response to our findings, reran the model and, as a result, found no changes, unsupported scores could result in other scores changing in the future. NYSERDA officials stated they reviewed the issues for offshore wind projects that we identified in the scoring and determined all the scores awarded were appropriate.

In summary, without fully documenting the Panel's decision-making process and discussions, NYSERDA may not be able to fully support how contracts were awarded or that the State has received the greatest amount of economic and environmental benefits intended through the RFP process for large-scale renewable projects.

In response to our audit, NYSERDA stated it has taken or plans to take steps to improve the procurement process deficiencies we identified, including:

- Developing streamlined, complete, and specific scoring guidelines for evaluators.
- Utilizing an aggregation of the scorers' individual preliminary scoresheets to populate the scoring rubric used for consensus scoring.
- Eliminating the use of the reference score.
- Requiring NYSERDA to capture any deviations from the scoring guidance, which should be rare, in the Team Memo or other memo to file.
- Reviewing preliminary scores and consensus scores for all RFPs to verify evaluators adhered to scoring guidelines, justified deviations, and only awarded points for eligible economic benefits.
- Requiring all scorers to certify in affirmation of the final consensus score.
- Including specific language in an appendix to the RFPs, providing additional details for eligible economic benefits.
- Requiring detailed consensus meeting notes describing all discussions for each non-price criteria, including the Project Viability criteria.
- Engaging an external auditor to evaluate alignment among all RFP documentation and processes for the 2022 Tier 1 and Offshore Wind awards.
- Hiring a dedicated Contracts Manager to support the large-scale renewables portfolio.

Further, the 10-point plan announced in October 2023 includes a point to accelerate and streamline the bidding process, which may have an effect on some of the concerns detailed above.

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Any steps taken to address inconsistencies and vague guidelines in the proposal scoring process would provide greater assurance that proposals are being scored consistently and that projects are being awarded appropriately, promoting the chances of the State's success in reaching Climate Act emission reduction goals through carefully procured renewable energy projects.

## Recommendations

### For PSC:

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.
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.
3. Analyze the expected renewable energy generation 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.
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.
5. Assess the extent to which ratepayers can reasonably assume the responsibility for covering Climate Act implementation costs. Identify potential alternative funding sources.

### For NYSERDA:

6. Take steps to ensure proposals are evaluated consistently and contracts are awarded to the most qualified proposers, including:
  - Adequately documenting the scoring process.
  - Requiring all evaluators to provide justification for their individual and consensus scores.
  - Developing more complete and specific scoring guidelines for evaluators.

# Audit Scope, Objectives, and Methodology

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The objectives of our audit were to determine if PSC and NYSERDA adequately planned to achieve the Climate Act goals, followed proper procurement practices for projects designed to reach the goals, and appropriately tracked and monitored progress toward meeting those goals. The audit covered the period from January 2016 through October 2023 for PSC. The audit covered the period from January 2016 through November 2021 for NYSERDA.

To accomplish our objectives and assess related internal controls, we reviewed laws, PSC Orders, relevant documents related to hearings and responses to hearings, utility requests, RFPs, contract files, and project data. We also interviewed officials from both PSC and NYSERDA and officials from NYISO.

We used a non-statistical sampling approach to provide conclusions on our audit objectives and to test internal control compliance. We selected both random and judgmental samples. However, because we used a non-statistical approach for our tests, we cannot project the results to the respective populations, even for the random samples. Our samples, which are discussed in detail in the body of our report, include:

- A random sample of 20 (out of 147) large-scale renewable energy projects to test the reliability of the data within Open NY and NYSERDA
- Five judgmental samples of large-scale renewable proposals selected based on award status and dollar amount to test whether the procurement process had been properly followed:
  - A sample of 21 out of 133 projects in Tier 1
  - A sample of 2 out of six projects in Tier 2 (Maintenance)
  - A sample of two out of three contracts awarded for Tier 2 (Competitive)
  - A sample of one out of two projects for Tier 4
  - A sample of three out of four projects for Offshore Wind

We also reviewed all 348 PSC Order clauses directed at DPS, NYSERDA, and the utilities to verify whether actions were completed.

We obtained data from Open NY and DPS's public system, both of which are public government databases that are used for widely accepted purposes, and the data is obtained from sources generally recognized as appropriate. We determined that the data from these systems was sufficiently reliable for the purposes of this report. Certain other data in our report was used to provide background information. Data that we used for this purpose was obtained from the best available sources, which were identified in the report. Generally accepted government auditing standards do not require us to complete a data reliability assessment for data used for this purpose.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of PSC's and NYSERDA's oversight and administration of Climate Act goal planning, procurements, and progress tracking.

## Reporting Requirements

We provided a draft copy of this report to PSC and NYSERDA officials for their review and formal written comment. We considered their responses in preparing this final report and have included them in their entirety at the end of this report. In their response, PSC officials disagreed with several of the audit's findings and statements within the report, while NYSERDA officials generally agreed with the audit's recommendations and said it had implemented changes to its procedures. Our responses to certain remarks are embedded within the PSC and NYSERDA responses as State Comptroller's Comments.

Within 180 days of the final release of this report, as required by Section 170 of the Executive Law, the Chair of the Public Service Commission and the President and CEO of the New York State Energy Research and Development Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

# Agency Comments - PSC and State Comptroller's Comments

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## Public Service Commission

Rory M. Christian  
Chair and

Chief Executive Officer

James S. Alesi

David J. Valesky

John B. Maggiore

Uchenna S. Bright

Denise M. Sheehan

Radina R. Valova

Commissioners

July 1, 2024

Ms. Nadine Morrell  
Audit Director  
State Government Accountability  
Office of the State Comptroller  
110 State Street-11th Floor  
Albany, New York 12236

Response to OSC Audit findings of the Public Service Commission and New York State  
Research & Development Authority Climate Act Goals – Planning, Procurements, and  
Program Tracking – Report 2022-S-4

Dear Ms. Morrell,

The New York State Department of Public Service (Department) has reviewed the draft audit provided by the Office of the State Comptroller (OSC) dated May 2024 (OSC Draft Report). The Department is pleased to note that OSC found that the Public Service Commission (Commission or PSC) and NYSERDA have taken “considerable steps” to transition to renewable energy in compliance with the Climate Leadership and Community Protection Act (CLCPA) and Clean Energy Standard (CES). Indeed, in the five years since the CLCPA was enacted, the PSC modified the existing CES to comply with the law, directed NYSERDA to continue undertaking solicitations for new renewable projects in the face of dramatically changing market conditions outside of New York’s control, approved \$5 billion in transmission investments to support renewable projects, worked with federal, State and local governments on renewable energy initiatives that have reduced the ratepayer costs of complying with CLCPA (potentially saving ratepayers billions of dollars), partnered with the Legislature to streamline the siting laws for renewables and transmission projects, advanced critical planning proceedings to ensure the energy transition is done in a safe and reliable manner, and expanded utility affordability initiatives. As discussed below, however, we do not agree with several other assumptions and findings in the

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OSC Draft Report, which appears to overlook or fails to recognize numerous examples of this work. We greatly appreciate the opportunity to respond with corrections and clarifications of some of the OSC Draft Report's findings in order to enhance the public's understanding of these complex issues.

In summary:

- The Department agrees with the OSC Draft Report's findings that there are many factors outside of the government's control that put the achievement of the CLCPA's renewable energy goals at risk. The OSC Draft Audit Report provides a valuable service in identifying some of these risks to help the public better understand the factors that may lead to achievement of CLCPA goals to transform New York's energy system falling marginally behind schedule, despite the comprehensive actions and concrete progress detailed in this response. The Department is taking prudent steps to reduce these risks, as outlined below, but there are factors that the Department simply cannot control that are acknowledged by the OSC's Draft Report – such as increased severe weather events and technological limitations to maintain reliability during such events, global supply chain disruptions, inflationary pressures, and other market forces – and that affect CLCPA implementation.
- The Department disagrees with the statement in OSC's Draft Report that PSC uses outdated data and incorrect calculations for planning purposes. As described in detail below, the PSC has ongoing planning processes that rely on regularly updated forecasts using best available data. OSC's conclusions are in some cases based on misinterpretations of data. For example, OSC misinterpreted a spreadsheet that included calculations for attrition rate to conclude the PSC used incorrect calculations for planning purposes, despite the fact that the Department provided documentary evidence and further explanation to the OSC showing that they were mistaken.

**State Comptroller's Comment** – We are not asserting that PSC always used outdated data; however, the evidence (master spreadsheet) provided to auditors to demonstrate how PSC tracked overall progress toward the Climate Act goals used both old and incorrect data. Additionally, this was not a misinterpretation of the data. The auditors asked for the calculations to verify that PSC applied the 20% capacity cushion established in 2020 to mitigate the risk of project cancellations. PSC only provided the auditors with a spreadsheet showing a 0.2% capacity cushion used as support. Even though this finding was previously provided to PSC both in writing and verbally, only after the closing conference did PSC say that the spreadsheet originally provided was not support for its application of the 20% capacity cushion. The only other support provided was in an October 2020 Commission Order. Further, PSC neglected to include in its response that the 20% rate only applies to Tier 1 projects, which are the expected source of less than half of the renewable energy procured to meet the 70% Climate Act goal. Additionally, on page 13 of our report, we note that DPS provided a PowerPoint presentation on the projections of the load demand to PSC, but this also contained errors related to the Climate Act goals.

- We agree with the OSC Draft Report's finding that the actual costs of the complete



transition to a decarbonized economy are not known but disagree with the statement that estimates of the costs have not been made. Below, we document numerous instances in which PSC has performed cost benefit analyses and ratepayer impact calculations associated with CLCPA-related decisions.

**State Comptroller's Comment** – While PSC might have developed cost estimates for individual programs, it has not developed an overall cost-benefit analysis or cost estimates, which are necessary to make executive decisions on the overall goals it is trying to achieve with the CLCPA and the impact those costs will have on ratepayers.

- We disagree with the OSC Draft Report's suggestion that the Commission has not identified other funding sources to meet the CLCPA's clean energy goals. As described in detail below, the PSC has taken affirmative steps to leverage federal funding and has explicitly advocated and accounted for State and local actions that have meaningfully reduced the ratepayer impacts of achieving the CLCPA's clean energy goals.

**State Comptroller's Comment** – According to our discussions with PSC throughout the audit, the federal funding it is leveraging has been related to tax credits and other money available to buy and install energy-efficient infrastructure such as electric appliances and heat pumps and not to directly lowering the cost of the transition to renewable energy. Still, this process usually involves the consumer investing money for the infrastructure and receiving a tax credit to reimburse a portion of that cost. The benefit of a tax credit to a customer may not be realized for some time after the investment has occurred. When we asked PSC about the evaluation of these actions to determine if they were successful, PSC did not provide evaluations for any of the programs. Therefore, PSC could not measure the impact it has or will have on ratepayers.

The Department appreciates OSC's acknowledgment that the PSC has taken steps to address risks and issues. However, the finding that the PSC has not yet begun to formally review progress is incorrect. The Commission issued a CLCPA Initiating Order in May 2022 to track and assess progress towards meeting the CLCPA goals and the Department staff provided the first Annual Informational Report on Overall Implementation of the CLCPA to the Commission in July 2023.

**State Comptroller's Comment** – It should be noted that our audit was engaged in January 2022 with the objectives to determine if PSC and NYSERDA adequately planned to achieve the Climate Act goals, followed proper procurement practices for projects designed to reach the goals, and appropriately tracked and monitored progress toward meeting those goals. PSC issued a CLCPA Initiating Order in May 2022 (5 months after our engagement and 2 years after the CLCPA was enacted) to track and assess progress toward meeting the CLCPA goals, and the Department staff provided the first Annual Informational Report on Overall Implementation of the CLCPA to PSC in July 2023. In October 2023, the State and NYSERDA issued their 10-point plan.

As noted in the report on page 11, we stated that their plans did not include all essential components. PSC is using outdated data for planning purposes and has not adequately addressed all current and emerging issues, such as increased push to transition to electric vehicles and the switch to use of electric for all residential

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heating and cooling, which will likely increase electricity demand significantly. Further, PSC did not correctly take into consideration the historical cancellation rate for renewable energy contracts (between 2005 and 2023, an average of 12% of contracted large-scale renewable projects were canceled) when projecting electricity generation estimates, increasing the risk that decision-makers are not using the most accurate information to support the achievement of program goals. When we asked PSC officials what they were currently doing to assess issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until July 2024 and did not provide any documentation to show that they have begun assessing the State's transition to renewable energy or potential obstacles to achieving goals. During the audit, we asked repeatedly for calculations of the costs and projected load demand figures. PSC officials did not provide this information and stated they did not have to update this information until their legislatively mandated July 2024 comprehensive review. While PSC did provide this report to the auditors in January 2024 in response to our preliminary report, officials were unable to show the actual calculations and support of what information was used to determine that New York would achieve 66% of the State's projected 2030 electricity load through renewable sources. Throughout our audit, PSC officials noted that they were behind in reaching the 2030 goal yet did not know how far behind they were. However, in July 2024, PSC announced it was 3 years behind in reaching that goal. This indicates either a lack of transparency or that the process to measure progress needs improvement or potentially both.

#### **Response to OSC Key Findings**

**Finding 1:** *“PSC is using outdated data, and, at times, incorrect calculations, for planning purposes and has not started to address all current and emerging issues that could significantly increase electricity demand and lower projected generation, such as increased push to transition to electric vehicles by 2035 and the cancellation or delay in renewable energy projects. Between 2005 and April 2023, an average of 11.3% of contracted capacity projects were canceled.” OSC Draft Report Page 2*

**Department Response:** This conclusion suggests a misunderstanding of electric system planning principles and best practices, and the manner in which those principles are applied in New York.

**State Comptroller's Comment** – We disagree that this is a misunderstanding. Further, we are not asserting that PSC always used outdated data; however, the evidence (master spreadsheet) provided to auditors to demonstrate how PSC tracked overall progress toward the Climate Act goals used both old and incorrect data. This included updated renewable energy generation needed to reach the Climate Act goals. In addition, PSC could not provide any support for the projection numbers in its 2023 report.

Consistent with best practices, the PSC uses current data and the best available projections during planning exercises and relies on various planning mechanisms to address both current and emerging issues. As noted elsewhere in the OSC Draft Report, planning is not an isolated, singular event, but an iterative, continuous process where adjustments are made to capture evolving baseline conditions that affect a multitude of variables, under evolving understandings of what the future may hold. Of necessity, planning exercises are conducted with the best information available at the time, providing the best, if not a perfect, ability to project energy needs into the

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future. Any recommendation that the DPS use information that was only available after a planning exercise was initiated, or that it should operate under assumptions not codified at the time that planning exercise was initiated, misunderstands the types of planning undertaken by the PSC.

**State Comptroller's Comment** – The audit did not suggest that PSC should use data not available at the time or use assumptions not codified at the time the planning exercise was initiated. While PSC did not use outdated information for all decisions, the master spreadsheet, which officials stated they use to track progress toward the CLCPA goal, did use outdated information. Moreover, errors were identified in this spreadsheet that was also used to support the 2020 Modification Order.

- Pursuant to its obligations under the Accelerated Renewable Energy Growth and Community Benefit Act, the Department prepared a [Power Grid Study](#) in 2021 that specifically modeled electric load for 2030 and 2040, with 2040 being the year by which the generation system must be zero emissions. The Department relied on this study as the basis for a number of actions taken to prepare the system for both short and long-term needs as part of its ongoing work under Case [20-E-0197](#). These actions include approval of several transmission projects to ensure the electric grid is ready to meet the growing demand due to increased electrification and for interconnection of the new renewable energy generation being developed throughout the state, addressing the near-term needs identified in Power Grid Study.

**State Comptroller's Comment** – PSC did not provide evidence that it used updated load demand and generation data during this process—even after repeated requests by the auditors.

- Consistent with recommendations from the Power Grid Study, the Commission has established a new transmission planning process, the Coordinated Grid Planning Process (CGPP), which involves long term projections for transmission needs at the bulk, local transmission, and distribution levels. This planning process is underway and utilizes the best available data sets, including a detailed supply curve of all available large-scale renewable resources in New York State, utility headroom data on available grid capacity for interconnection of new resources, and granular cost and generation profiles for each zero-carbon resource. The CGPP utilizes sequences of increasingly localized modeling frameworks, within industry-standard software tools, to determine the optimal mix of renewable resource and transmission and distribution infrastructure needed to meet our 2030 and 2040 electricity system goals. The process will be repeated on a regular cycle, and all data inputs will be updated for each cycle, addressing the need for proactive planning on an ongoing basis.
- The Department leverages current data as part of its electric system planning processes. For example, as part of the CGPP initiated by the Commission under Case [20-E-0197](#) on August 17, 2023, the New York State Utilities and Long Island Power Authority (LIPA) will develop detailed short circuit and power flow models using the New York Independent System Operator's (NYISO's) most recent Federal Energy Regulatory Commission (FERC) Form 715 database of system models and auxiliary files and the NYISO Load and Capacity Data (referred to as the Gold Book) as part of this long-term transmission planning framework to achieve the goals of the CLCPA .

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- The Commission relies on planning studies conducted annually and quarterly by the NYISO to track emerging reliability concerns. The NYISO utilizes the most current data available for these studies derived from their operation of the State’s energy system. The most recent NYISO [Comprehensive Reliability Plan](#), which sets forth a plan for the bulk power system over a 10-year horizon, was released in November 2023 and will be used for subsequent planning studies until the release of the next study in 2025.
- The Commission initiated a Proceeding to assess implementation and compliance with the requirements and goals of the CLCPA under [Case 22-M-0149](#) on May 12, 2022 to track and assess the advancements made toward meeting the requirements and goals of the CLCPA, and to provide policy guidance, as necessary, for additional actions needed to fulfill the objectives of the CLCPA. The [First CLCPA Report](#) issued on July 20, 2023, and associated presentation before the Commission included both an historic look back at the cost and benefits to transition to renewable energy sources, as well as future projections of the same. The next CLCPA report will be issued in 2024.

**State Comptroller’s Comment** – When we asked PSC officials what they were currently doing to assess issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until July 2024 and did not provide any documentation to show that they have begun assessing the State’s transition to renewable energy or potential obstacles to achieving goals. During the audit, we asked repeatedly for calculations of the costs and projected load demand figures. PSC officials did not provide this information and stated they did not have to update this information until their legislatively mandated July 2024 comprehensive review. While PSC did provide this report to the auditors in January 2024 in response to our preliminary report, officials were unable to show the actual calculations and support of what information was used to determine that New York would achieve 66% of the State’s projected 2030 electricity load through renewable sources.

Finally, the Department disagrees with the OSC Draft Report’s assertion that between 2005 and April 2023, an average of 11.3 percent of contracted capacity projects were canceled.

**State Comptroller’s Comment** – This information was amended in the final report from 11.3% to 12% based on PSC’s response to the draft report. The information used to calculate the cancellation rate was reported by NYSERDA to Open NY for large-scale renewable projects as of April 2023. Further, the report states that the percentage of canceled projects is based on the number of projects—not contracted capacity. We also made other minor changes to clarify our report based upon discussions with agency officials after the draft report was issued.

As NYSERDA stated in its [comments](#) on the offshore wind inflation petitions, as of August 25, 2023, “the NYSERDA Tier 1 portfolio has experienced approximately 6 percent attrition on a generation capacity basis. The OSW and Tier 4 programs have not experienced attrition.”

**State Comptroller’s Comment** – While no projects have been officially canceled, as noted in the report on page 15, two projects resubmitted bids under the 2023 solicitation for offshore wind projects and were provisionally awarded contracts. The amount of energy they proposed to provide (between 1.65 GW and 1.82 GW) was the same, but the price increased over 30% and the projects’ operational dates were pushed back from 2024 to 2026. Additionally, as of April 2024, it was announced that three other offshore wind projects totaling over 4 GW of capacity that were provisionally awarded under the 2022 solicitation could not reach a final agreement

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and will not be entering into a contract. A large portion of New York City's renewable energy is expected to come from offshore wind, so similar issues could dramatically affect the achievement of Climate Act goals.

Furthermore, the Department and Commission have proactively reduced the risk of missing the 2030 goal by allowing NYSERDA to assume an attrition rate of 20 percent when determining procurement amounts, which is well above the historic rate of 6 percent. This 20 percent attrition rate is reflected in the [Commission's October 2020 Order](#) that modified the CES to be consistent with the CLCPA goals, and through NYSERDA's procurements, which assume 20 percent more MWh than is projected for 2030 and beyond.

**State Comptroller's Comment** – PSC neglected to report that the 20% attrition rate only applies to Tier 1 projects—which is less than half of the projects expected to be used to reach the 70% goal. Further, concerns exist with the offshore wind projects because of a variety of issues such as inflation, supply chain issues, and availability of materials. While no contracts have officially been canceled, trends show that some of these contracts may have to be amended through a competitive bid process, which may ultimately raise the cost of these projects. In the event an agreement on price cannot be made, it is possible that these contracts may be terminated, and PSC has to plan for this scenario.

**Finding 2:** *“The costs of transitioning to renewable energy are not known, nor have they been reasonably estimated. Moreover, funding sources to cover those costs have not been identified, leaving the ratepayers as the primary source of funding. The lack of alternative funding sources adds additional risk to whether the State can meet its goals timely. Data shows utility costs have already risen sharply over the last two decades and more New Yorkers are having difficulty paying their bills.” OSC Draft Report Page 2*

**Department Response:** A broad range of independent analysts, consulting firms, economists, and experts in the private and public sectors are engaged in tracking and forecasting the costs of renewable energy deployment, as well as the externalized costs of continuing to rely on fossil fuels. These cost estimates are continuously updated based on best available data and updated inputs. However, the past few years have shown that "black swan" events including COVID-19, inflation, geopolitical developments, supply chain challenges, and changes in interest rates and the cost of capital can and have led to major revisions in the costs of clean energy deployment. The PSC will continue to use the latest data to do detailed cost-benefit analysis for all programs and policies approved by the Commission, focused on its core, statutory mandate of safe and reliable service at just and reasonable rates. Nevertheless, as an administrative agency, the DPS and the PSC are bound to implement the laws of the State. OSC's finding that costs of transition to a decarbonized economy were not calculated when the CLCPA was passed are accurate. Because the CLCPA was a piece of legislation passed outside of the budget process, sources of funding for the transition envisaged by the CLCPA were neither identified nor provided for by the Legislature.

We agree that the actual costs of the complete transition to a decarbonized economy are not known but disagree with the statement that estimates of the costs have not been made the DPS, NYSERDA and others.

**State Comptroller's Comment** – While PSC might have developed cost estimates for individual programs, it has not developed an overall cost-benefit analysis or cost estimates,

which are necessary to make executive decisions on the overall goals it is trying to achieve with the CLCPA and the impact those costs will have on ratepayers. In addition, PSC did not reasonably estimate or verify other entities' estimates of the cost of the transition to renewable energy.

The Climate Action Council's Draft Scoping Plan includes an Integration Analysis that estimated costs to implement the CLCPA. (See New York State Climate Action Council Draft Scoping Plan: Integration Analysis Technical Supplement (Appendix G) <https://climate.ny.gov/resources/scoping-plan/-/media/project/climate/files/Appendix-G.pdf>).

Additionally, it is important to clarify that, to the extent that the PSC is required to implement the goals of the CLCPA, the only tool the PSC has at its disposal to pay for the investments necessary to transform the State's energy systems and address energy affordability is through its utility rate-making power. Consistent with its obligation to provide just and reasonable utility rates, the DPS and the PSC have incorporated the costs of the transition to a decarbonized economy into its thinking at every step. Furthermore, while OSC's finding that the Legislature did not identify funding to support the transition is correct, it is incorrect to suggest that the Commission has not taken actions to identify other sources of funding. The Commission has taken actions to encourage utilities and ratepayers to pursue federal funding options, and examples of Commission actions to leverage State and local government initiatives to reduce ratepayer impacts of the CLCPA are detailed below. Moreover, the OSC Draft Report does not acknowledge that, in addition to pursuing the goals articulated in the CLCPA, the Commission's central mission under the Public Service Law is to ensure just and reasonable rates for consumers and to maintain the reliability of the energy system as a whole. The goals of ensuring just and reasonable rates in a reliable energy system are major factors in every Commission decision, including those related to the energy transition.

**State Comptroller's Comment** – PSC is mistaken. We acknowledge PSC's mission on page 8 of our report and stated "PSC's mission is to ensure affordable, safe, secure, and reliable access to utility services for the State's consumers at just and reasonable rates while protecting the natural environment and to stimulate effective competitive markets for clean, renewable, and distributed energy resources along with product and service innovations to benefit consumers. PSC thus must determine the rates are reasonable for both the consumer and the producer so that New York can successfully transition to the level of renewable energy it desires to achieve."

- The Department recognizes the magnitude of the investment necessary to effectuate the provisions of the CLCPA and makes all efforts to minimize the impacts of such on utility ratepayers.
- An exhaustive review of how Commission policy and decisions address ratepayer concerns and balance costs and benefits may be beyond the scope of OSC's effort. For an overview, we note that the DPS whitepapers and subsequent orders on each clean energy program that the Commission has adopted consider the estimated costs and benefits of those initiatives, an established practice that predates the CLCPA. In addition, the [First CLCPA Report](#) and associated [presentation](#) before the Commission provide both an historic look at the cost and benefits of the Commission's renewable energy programs and projections of the likely future costs. This report will be updated pursuant to the first biennial comprehensive report required under PSL § 66-p(3). The report and presentation also include a summary of programs adopted to date.

- It is worth noting here that the federal Inflation Reduction Act (IRA) contains a range of [tax credits](#). The IRA results in lower costs of procurement of renewable energy credits (RECs) and distributed solar, which in turn lowers costs to ratepayers. For instance, the PSC’s order initiating the Zero Emission Credit Requirement to preserve nuclear zero-emission attributes expressly provided that ZEC payments would be adjusted for a change in law - in this case, the IRA production tax credit - that materially changed the economic benefits of the contract. In August 2023, the Governor announced that the IRA tax credits will provide significant financial support to the four operating nuclear reactors in New York, thereby reducing future payments by New York electric ratepayers to these facilities. The Commission has encouraged the entities under its jurisdiction to pursue IRA tax credits whenever possible.

**State Comptroller’s Comment** – According to our discussions with PSC throughout the audit, the federal funding it is leveraging has been related to tax credits and other money available to buy and install energy-efficient infrastructure such as electric appliances and heat pumps and not to directly lowering the cost of the transition to renewable energy. Still, this process usually involves the consumer investing money for the infrastructure and receiving a tax credit to reimburse a portion of that cost. The benefit of a tax credit to a customer may not be realized for some time after the investment has occurred. When we asked PSC about the evaluation of these actions to determine if they were successful, PSC did not provide evaluations for any of the programs. Therefore, PSC could not measure the impact it has or will have on ratepayers.

Additionally, the Department, in coordination with other State agencies, works to advocate to the federal government for additional external funding and to create partnerships with other neighboring states to try to lower the overall costs and improve the efficiency of clean energy investments. See one example of this here for the Northeast States Collaborative on Interregional Transmission: <https://www.utilitydive.com/news/northeast-states-doe-interregional-transmission-collaboration-iso-ne/653298/>.

- The Commission has advocated, facilitated and accounted for State and local government initiatives to procure renewable energy to offset the amount of renewable energy that must be contracted by ratepayer-funded procurements. For example, in its April 2022 Order approving Tier 4 projects, the Commission accounted for New York City’s contracted commitment to purchase Tier 4 RECs that resulted in a savings to ratepayers estimated to be between \$0.8 to \$1.7 billion over the life of the projects. (See [Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates](#), Case [15-E-0302](#).)
- In the same April 2022 Order, the Commission acknowledged how the City’s procurement and a similar commitment by the State Office of General Services can lower ratepayer costs and explicitly called for an “all of government” approach to lessen the ratepayer impacts of achieving the CLCPA goals, noting: “The City of New York is making significant financial commitment to Tier 4 and has provided a model for other branches of State and municipal governments to follow. In this respect, on April 8, 2022, the Office of General Services (OGS) filed a letter of intent in the docket stating that it would also be entering into a contract with NYSERDA for Tier 4 RECs associated with energy used by State agencies and departments located in the City on terms similar to those in the NYC Contract. The Commission sees this “all of government” approach as a significant development that will meaningfully reduce the utility ratepayer impact of implementing the CLCPA, and

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strongly encourages other branches of government to make similar commitments under Tier 4 and other CLCPA initiatives, like those made by NYC and OGS.”

- In September 2022, Governor Hochul issued [No. 22: Leading by Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program | Governor Kathy Hochul \(ny.gov\)](#), which, among many other sustainability directives, requires affected State government entities to procure 100% of its electricity requirements from CES-eligible resources. The EO explicitly notes that this requirement is “part of an all-of-government approach to meet the goals of the CLCPA in a cost-effective manner.”

**Finding 3.** *“PSC has taken steps to address some risks and issues; however, it has not yet begun to formally review progress toward Climate Act goals with updated generation and electricity demand forecasts. While PSC noted it has until July 2024 to begin this assessment, waiting until that point to fully review all efforts and costs of the transition to renewable energy increases the risk that Climate Act goals will not be met within the established time frame.” OSC Draft Report Page 2*

**Department Response:** The Department’s efforts to address risks associated with changes in the energy market and how those changes may affect New York ratepayers are core to its mission to ensure just and reasonable rates. The Department appreciates OSC’s acknowledgment that the PSC has taken steps to address risks and issues. However, the finding that the PSC has not yet begun to formally review progress, suggesting its CLCPA assessment will be deferred to July 2024, is incorrect.

- The Commission issued a CLCPA Initiating Order in May 2022, far in advance of the July 1, 2024 deadline established under PSL § 66-p(3), to track and assess progress towards meeting the CLCPA goals and to provide policy guidance for the additional actions that may be needed to help achieve the goals. Department staff provided the first Annual Informational Report on Overall Implementation of the CLCPA ([First CLCPA Report](#)) to the Commission in July 2023, which included a summary of recent efforts and outcomes in relation to several key areas of implementation of the CLCPA including renewable electricity and energy storage, transmission, energy efficiency and building electrification (EE/BE), and transportation. The First CLCPA Report also provides an overview of the State’s progress toward achieving the goals established under the CLCPA, an understanding of the overall energy savings, energy generation, and emissions reductions across all of the Commission’s CLCPA-related programs, a summary of electric and gas utility cost recoveries to date associated with such programs, and an understanding of gas and electric utility ratepayer impacts for the programs. Department Staff are working on the next version of the CLCPA report, which will update the earlier information. The CLCPA progress assessment is an ongoing activity, and public updates will be regularly provided. and thus, an assessment has not been deferred to July 2024.

**State Comptroller’s Comment** – When we asked PSC officials what they were currently doing to assess issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until July 2024 and did not provide any documentation to show that they have begun assessing the State’s transition to renewable energy or potential obstacles to achieving goals. During the audit, we asked repeatedly for

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calculations of the costs and projected load demand figures. PSC officials did not provide this information and stated they did not have to update this information until their legislatively mandated July 2024 comprehensive review. While PSC did provide this report to the auditors in January 2024 in response to our preliminary report, officials were unable to show the actual calculations and support of what information was used to determine that New York would achieve 66% of the State's projected 2030 electricity load through renewable sources.

**Finding 4:** *OSC determined that a formal backup plan has not been established in the event Climate Act goals are found to be unachievable within the prescribed time frames, other than PSC suspending or modifying the obligations under the Climate Act and relying on the continued use of fossil fuels to generate electricity until sufficient renewable electric generation is developed. However, continuing to use fossil fuels as a backup plan would delay emission reductions and increase the burden on ratepayers by forcing them to continue to support fossil-fuel generation that otherwise could be retired—including the additional cost of the infrastructure to safely transport the fossil fuels to where they will be used to generate energy.” OSC Draft Report Page 2*

**Department Response:** We agree that a delay in achieving decarbonization goals means some fossil energy resources may operate longer than they would if all goals were met on time. The OSC Draft Report acknowledges that the CLCPA itself prescribes that the backup plan is to “temporarily suspend or modify obligations after a hearing if it determines the implementation of the renewable energy program is impeding the provision of safe and reliable electric service, impairing existing obligations or agreements, or resulting in a significant increase in arrears or service disconnections.” (OSC Draft Report, Page 8). However, to the extent that OSC believes that notwithstanding the statute PSC should develop an alternative “formal backup plan,” OSC’s determination appears to be based on an inaccurate or incomplete understanding of electric system planning.

**State Comptroller’s Comment –** This is not a misunderstanding. Simply relying on changing or suspending the Climate Act is not a plan. PSC officials must develop general actions they would take in the event the State is not going to achieve the Climate Act goals so that adjustments can be made quickly to resolve or mitigate any issues or adverse effects.

- The Commission, the NYISO, and the utilities are planning for the achievement of CLCPA goals. The risk that arises if those plans are inaccurate or if the necessary infrastructure is not built on time is a risk to reliability. We agree that a “backup plan” is needed to mitigate that risk but disagree with any suggestion that this must entail a “formal” comprehensive structure that differs from that created by the legislature. Instead, backups and back stops already have been built into existing planning processes. The NYISO’s reliability planning, which is updated quarterly, includes mechanisms for implementing “back stop” solutions where a reliability deficiency is identified. Thus, as the supply mix changes over time, alternate plans will be developed as necessary to ensure system reliability standards are met. For example, while the PSC, the NYISO, and the utilities make plans for energy resources to change over time, those system reliability planning standards include requirements to maintain system reliability in the event those plans are affected by changing demand forecasts or other factors (e.g., NYISO recently exercised a provision in

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DEC’s air regulations to keep online certain peaking power plants to allow more time for the Champlain Hudson Power Express (a Tier 4 resource under the CES) to come online).

**State Comptroller’s Comment** – We disagree. As noted on page 11 of our report, a formal backup plan has not been established in the event that Climate Act goals are found to be unachievable within the prescribed time frames, other than PSC suspending or modifying the obligations under the Climate Act and relying on fossil fuels. This “peaker plant” extension is for a 2-year period; however, any extension may interfere with the emissions goals. Again, PSC officials should have a backup plan that identifies all these risks and how they will proceed if they do not meet these goals and how it will affect the Climate Act goals.

- We add that Department Staff also carries out annual reliability planning efforts for both short-term and long-term horizons, to ensure potential reliability issues are identified proactively. The analysis is presented to the Commission, which may take action to ensure reliability gaps are covered.
- The Commission also initiated a statewide gas planning proceeding (See [Case 20-G- 0131](#)) that allows for extensive stakeholder input into utility long-term plans. The final plans provide a path to ensure gas planning efforts are sufficient to meet customer demand and incorporate goals under the CLCPA. The planning effort occurs every three years, with annual reports filed on the status of the efforts outlined in the plans. The Commission further supports recovery for projects in utility capital budgets in rate plans to ensure necessary reliability infrastructure investments are made. There are current requirements in place for dual fuel/interruptible customers in utility tariffs to ensure that backup fuel supply is available in the event of any supply disruptions/outages. Similar requirements will be developed as needed through the statewide gas planning proceeding as we continue to transition the gas system to meet the CLCPA goals.

## **Response to Other Statements and Findings in the Draft Report**

### **CLCPA Planning and Progress**

#### **Planning and Assessments**

*“PSC and NYSEERDA’s most current projections of energy demand and generation were completed in 2020 based on 2019 data, meaning the data and projections are, therefore, outdated in terms of recent legislation and regulations, which may increase electrical demand, including:*

- *A September 2022 regulation to eliminate the sale of new non-electric vehicles by 2035.*
- *The 2022 Environmental Bond Act funding green building projects for State-owned buildings and public schools.*
- *2023 legislation prohibiting the installation of fossil fuel equipment and building systems in certain new buildings beginning in 2026.*

*We reviewed and discussed the projections with PSC officials, who also agreed that they contained calculation errors—the most notable being the allowance for 0.2% capacity cushion to mitigate the risk of project cancellations instead of the intended 20%. Additionally, DPS provided a*

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*PowerPoint presentation on the projections to PSC, but this also contained errors related to the Climate Act goals. PSC already does projections of energy demand every 6 months to help identify peak demand during summer and winter months but does not utilize those projections to update the analysis of projected consumption versus projected supply of renewable energy. Decision-makers need accurate, complete, and current data to make the best decisions; without it, it is less likely that Climate Act goals will be achieved, especially within the currently required time frames.” OSC Draft Report page 12*

**Department Response:** While we agree on the need for accurate information, there are several problems with OSC’s characterizations. As discussed above, the Commission uses current data for planning purposes and looks to various planning mechanisms that address both current and emerging issues. Other concerns are explained below:

**State Comptroller’s Comment** – Our suggestion was to use the best data currently available; however, the evidence (master spreadsheet) provided to auditors to demonstrate how PSC tracked overall progress toward the Climate Act goals used both old and incorrect data. This includes updated expected load demand projections to compare to projected generation. In addition, PSC could not provide any support for the projection numbers in its 2023 report.

- It is important to note that all long-term planning exercises are based on underlying assumptions and projections for the conditions that the future system will have to support. The longer the term, the more uncertain those assumptions and projections. To account for these uncertainties, energy system planning includes scenario analysis in which different scenarios are defined for the variables that can have the greatest impact on the outcome. For example, we conduct separate analyses based on a high load forecast scenario or a low load forecast scenario.
- It is inaccurate to suggest that the Commission does not consider changes in load. As already noted, the [Commission's October 2020 Order](#) built in a 20 percent generation attrition rate (see page 24 of the order; page 27 of the PDF), which is used to address any increased load beyond what was currently projected for the period. Additionally, NYSERDA has been procuring 20 percent more MWh of new resources than what is projected to be needed for 2030 and beyond. Moreover, projections are regularly updated as part of the on-going biennial review.
- Several processes allow the Commission a close to real-time view of increases in load. The Commission undertakes annual [Summer](#) and [Winter](#) preparedness evaluations that examine, among other things, the reliability of the existing system to meet projected load. The Commission uses the most current projections for these semi-annual evaluations.
- OSC misunderstands the 0.2% referenced in this finding as well as in several other areas of the OSC Draft Report. Contrary to the draft’s implication, it is *not* related to the NYSERDA procurement levels. The 0.2% in the spreadsheet provided to the auditors on April 15, 2022, titled “200430cES CLCPA Load-Targets- (Base Case-Pathways) – baseline per 2018 Progress Report excl bio,PV – FINAL (2).xlsx”, located in cell O17, of the spreadsheet tab titled “Summary Worksheet”, is the assumed Baseline attrition per year, as labeled. That is the expected reduction in the New York State baseline renewable generation. It is not an error, and it is not the project attrition percentage assumed by NYSERDA for procurement purposes.

**State Comptroller's Comment** – PSC neglected to report that the 20% only applies to Tier 1 projects—which is less than half of the projects expected to be used to reach the 70%. Further, concerns exist with the offshore wind projects because of a variety of issues such as inflation, supply chain issues, and availability of materials. While no contracts have officially been canceled, trends show that some of these contracts may have to be amended through a competitive bid process, which may ultimately raise the cost of these projects. In the event an agreement on price cannot be made, it is possible that these contracts may be terminated, and PSC has to plan for this scenario.

**Energy Storage and Transmission Constraints:**

*“According to NYISO’s 2022 Power Trends report (a publication that summarizes key grid issues), NYISO concluded that the grid of the future will require significant amounts of on-demand, zero-emission, flexible resources that can account for the weather-related intermittency of renewables. Another challenge to future grid planning is the constraints of the existing transmission system, which limit the ability to deliver renewable energy to consumers. Additional transmission capability would maximize the potential contribution of these renewable resources to meet electric demand and achieve public policy goals. However, this additional transmission capability needs to be planned, constructed, and put into service in a timely manner, which could be a difficult task—even with the progress PSC and NYSERDA have made with planning—as any delays could significantly impact reaching the Climate Act goals in the established time frames. The risk of failing to meet Climate Act goals increases when having to rely on an undeveloped technology that might take years to advance to its ultimate usable form. The State has taken steps to increase the amount of energy that can be stored for future use, but the issue of how long that energy can be stored is the most limiting factor.” OSC Draft Report page 14*

**Department Response:**

- We agree with the finding that additional transmission will be needed to accomplish the transition to renewable energy and to gain all the benefits of energy storage resources. However, OSC’s description omits that the PSC, the NYISO and the utilities are engaged in long term planning through the CCGP that will identify the transmission investments needed to meet State goals. OSC also fails to note actions taken by the Commission over the last several years to accelerate the buildout of the state’s transmission and distribution system, for example:
  - [Order on Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act](#)
  - [Order on Priority Transmission Projects](#)
  - [Order on Phase 1 Local Transmission and Distribution Project Proposals](#)
  - [Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals](#)
  - [Order Approving Phase 2 Areas of Concern Transmission Upgrades](#)
  - [Order Approving a Coordinated Grid Planning Process](#)
- OSC also does not acknowledge recent changes in transmission siting law, the RAPID Act, which is designed to facilitate construction of transmission upgrades.

**State Comptroller's Comment** – In April 2024, we issued an audit of the Office of Renewable Energy Siting (ORES), which is now part of PSC, that noted, while the overall time between application and final siting permit has improved since the creation of ORES,

the process has taken significantly longer than originally envisioned because certain aspects of the process were not considered. For the 15 projects ORES reviewed, we found that neither the time to issue a notice of incomplete application and for the applicant to respond nor the time prior to an application's transfer to ORES was taken into consideration. For the 14 projects that received final siting permits, it took an average of 3 years to deem the application complete—the longest part of ORES's process—and, overall, an average of 3.7 years from the initial application date to the date the final siting permit was issued.

- We agree that present day energy storage technology is not adequate to meet the projected needs. The [Energy Storage Roadmap](#), approved by the PSC and announced by Governor Hochul on June 20, 2024, identifies research and development needs to accelerate technology innovation, particularly for long-duration energy storage, and recommends approaches to storage deployments in a manner that furthers the State's efforts in replacing New York's most polluting fossil fuel facilities, among other things.
- We accept the NYISO's Power Trends conclusion that dispatchable zero emissions technologies will be necessary to maintain system reliability in the future. Department Staff are fully engaged in efforts to identify potentially valuable technologies that can meet this need. For example, the Department recently engaged stakeholders in a technical conference to discuss the technologies needed to meet the Zero by 2040 goal, and the Commission has approved or is considering funding for energy storage ([Energy Storage Roadmap and Case 18-E-0130](#)) and existing nuclear (see page 19 of the [Order Adopting a Clean Energy Standard](#)).

#### **Project Cancellations:**

*“Project cancellations have already slowed progress toward meeting Climate Act goals. Per NYSERDA reporting, between 2005 and 2023, 28 projects totaling 1,319 MW were canceled—an average of 11.3% of contracted capacity. PSC stated they included a 20% capacity cushion to mitigate project cancellations. However, the analysis they provided only had an actual 0.2% capacity cushion instead of 20% for this purpose. This cushion is not sufficient to cover the historical project cancellation rate. Not correctly factoring in the potential cancellation of projects deprives decision-makers of the best or most accurate data on which to base important decisions.”*  
OSC Draft Report page 14

#### **Department Response:**

- The [Commission's October 2020 Order](#) that modified the CES to be consistent with the CLCPA goals assumed a 20 percent attrition rate, a figure larger than the historical attrition rate of 6 percent. See page 24 of the order for the goal and assumed attrition rate. Additionally, NYSERDA is procuring 20 percent more MWh than is projected for 2030 and beyond. By assuming an attrition rate of 20 percent, which is well above the historic rate of 6 percent, while procuring 20 percent more MWh than projected for 2030 and beyond, the Department and Commission, in coordination with NYSERDA, are proactively reducing the risk of missing the 2030 goal. Again, as previously noted, OSC misunderstands the 0.2% referenced in this finding. Contrary to the draft's implication, it is *not* related to the NYSERDA procurement levels, but is the expected reduction in the

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New York State baseline renewable generation. It is not an error, and it is not the project attrition percentage assumed by NYSERDA for procurement purposes.

**State Comptroller's Comment** – This is not a misunderstanding of the data. The evidence (master spreadsheet) provided to auditors to demonstrate how PSC tracked overall progress toward the Climate Act goals used both old and incorrect data. Additionally, this was not a misinterpretation of the data. The auditors asked for the calculations to verify that PSC applied the 20% capacity cushion established in 2020 to mitigate the risk of project cancellations. PSC only provided the auditors with a spreadsheet showing a 0.2% capacity cushion used as support. Even though this finding was previously provided to PSC both in writing and verbally, only after the closing conference did PSC say that the spreadsheet originally provided was not support for its application of the 20% capacity cushion. The only other support provided was in an October 2020 Commission Order. Further, PSC neglected to report that the 20% only applies to Tier 1 projects—which is less than half of the projects expected to be used to reach the 70% goal. Further, concerns exist with the offshore wind projects because of a variety of issues such as inflation, supply chain issues, and availability of materials. While no contracts have officially been canceled, trends show that some of these contracts may have to be amended through a competitive bid process, which may ultimately raise the cost of these projects. In the event an agreement on price cannot be made, it is possible that these contracts may be terminated, and PSC has to plan for this scenario.

- This statement does not take into account the daily work performed by Department staff to monitor the State's movement towards CLCPA compliance. Staff review public reports created by NYSERDA containing renewable energy achievements for the calendar year, including chiefly, the achievements of the Clean Energy Standard program. These achievements are compared with the incremental renewable energy goals established for each year. Staff also compare these reported achievements with those listed in the OpenNY database and periodically meet with NYSERDA to discuss the recent shortfall in achievements including discussions of project cancellations. Discussions include reasons for project cancellations including inflation, supply chain backups, and permitting issues, among others. Staff also track quarterly NYSERDA expenditures of the Clean Energy Standard and Clean Energy Fund (which contains the [NY Sun Program](#)) as submitted to the Department to bring any spending issues to management's attention.

**Expiring Contracts and REC Price Agreements:**

*“When contracts for renewable energy sources were first approved, some sources were contracted for a 10- to 20-year span. After the contracts expire, facilities will need market revenues to support continued operation, and this is understood by facility proposers upon application. Revenue could come from wholesale market sales, or facilities would be free to contract with any individual energy consumer for both energy and RECs at an agreed-upon price. When contracts expire, there is no guarantee that the energy produced by those New York facilities will stay in New York, threatening Climate Act goals.” OSC Draft Report page 15*

**Department Response:**

- The factors that OSC identified are present in any market. There is a risk of generators selling out of state, even today, that is the nature of the regional markets. Contracts

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procured under the Clean Energy Standard are designed to be 20+ years in length and will not expire until after 2040. In-state generators will still deliver power within NYS, even if they're selling RECs out of state. NYPA hydro is a good example of a long-standing asset delivering clean power and supporting a decarbonized grid, even absent a REC contract. Permanent subsidy payments shouldn't be the goal.

**State Comptroller's Comment** – PSC is missing the point on this issue. As noted previously, our report states that PSC needs to evaluate the various scenarios and issues that can affect our ability to meet the Climate Act goals. This is one of them. In addition, we note there are 25 more large-scale renewable contracts that will expire by 2040.

**Other Issues Affecting State's Ability to Meet Goals:**

*“Several additional existing and emerging issues that may affect New York's ability to meet Climate Act goals should be considered, including:*

- *The increasing risk of severe weather puts the availability of necessary electricity in jeopardy during and after these events, especially with growing supplies of intermittent generation that may not be available when needed.*
- *California is, at times, able to generate enough renewable electricity to cover 100% of its demand. However, because of the inability to store renewable energy long enough to use it as an on-demand source—a challenge New York also faces—California is still reliant on fossil fuels to produce the energy necessary to meet demand. Sometimes, because of timing, there isn't enough energy to meet peak demand.*
- *New York has approved the Champlain Hudson Power Express line to bring electricity from Quebec to New York City. However, a provision in the contract states this hydroelectric power might not be available during the winter months because Canadian needs take priority over New York's.*
- *Recently enacted or proposed legislation could have the potential to increase electric demand in New York State. This includes the requirement to transition to electric vehicles and the electrification of housing.*
- *Replacement of solar panels and wind turbines at the end of their useful life ensures the continuation of renewable energy. However, delays could result from supply chain issues as well as availability of materials, leading to lower generation of renewable energy.*

*While PSC is not solely responsible for ensuring the State is prepared to meet Climate Act goals, as the entity tasked with establishing and reviewing the State's renewable energy program, PSC should discuss the potential effects of these issues with the agencies responsible for ensuring a smooth transition and should ensure all parties are aware of the impacts to their area of responsibilities. PSC should then determine the effect these concerns could have on energy demand and include that information in its projections to provide the best possible chances of meeting Climate Act goal.” OSC Draft Report page 15*

**Department Response:**

The Commission is familiar with the issues raised by OSC and is also aware of issues raised in

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other jurisdictions that are moving towards decarbonization. The Commission makes its decisions in a public framework that involves extensive consultation with stakeholders and has the ability to access and consult experts. These experts can contribute to identifying and resolving these and many other concerns, including other state and federal agencies tasked with similar objectives. As noted above, planning projections consider multiple variables and sources of information.

**State Comptroller's Comment** – In response to auditor requests for documentation that these risks had been considered, no such documentation was provided.

**Gap Between Renewable Energy Projections and Current Generation:**

*“New York has a long way to go to meet its renewable energy goals, complicated by failure to use the most accurate data available for demand forecasts and the history of project cancellation in planning. The goals may be more difficult to achieve given the challenges presented by New York City energy needs and the obstacles involved in the transmission of renewable energy to the City.*

*PSC has taken some steps to address these issues, such as using the Power Grid Study and Accelerated Renewable Energy Growth Act to implement the transmission plan, which led to the approval of several transmission projects to ensure the electric grid is ready to meet the growing electricity demand. Further, PSC officials stated they included a 20% cushion to address project cancellations. However, the analysis they provided to support that claim had only a 0.2% capacity cushion for this purpose. While they have taken actions to examine and resolve issues, more actions and planning are necessary. PSC must ensure construction timelines are accurate or if the facilities will be able to produce the amount of electricity they are contracted to provide.*

*When we asked PSC what they were currently doing to assess the risks and impacts of current and emerging issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until 2024 and did not provide any documentation to show that they have begun assessing the State's transition to renewable energy or potential obstacles to achieving goals.” OSC Draft Report page 18*

**Department Response:**

- We appreciate that the Draft OSC Report recognizes that the PSC has taken steps to address the challenges of achieving the State's renewable goals. The Department regularly assesses the risks and impacts of current and emerging issues and the State's transition to renewable energy as well as obstacles.
- In anticipation of the July 1, 2024 deadline established under PSL § 66-p(3), the Commission issued a CLCPA Initiating Order in May 2022, to track and assess the progress made towards meeting the CLCPA goals and provide policy guidance as necessary for the additional actions that may be needed to help achieve the goals. Department staff provided the first Annual Informational Report on Overall Implementation of the CLCPA ([First CLCPA Report](#)) to the Commission in July 2023, which included a summary of recent efforts and outcomes in relation to several key areas of implementation of the CLCPA including renewable electricity and energy storage, transmission, energy efficiency and building electrification (EE/BE), and transportation. The First CLCPA Report also provides an overview of the State's progress toward achieving the goals established under

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the CLCPA, an understanding of the overall energy savings, energy generation, and emissions reductions across all of the Commission’s CLCPA-related programs, a summary of electric and gas utility cost recoveries to date associated with such programs, and an understanding of gas and electric utility ratepayer impacts for the programs.

**State Comptroller’s Comment** – When we asked PSC officials what they were currently doing to assess issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until July 2024 and did not provide any documentation to show that they have begun assessing the State’s transition to renewable energy or potential obstacles to achieving goals. During the audit, we asked repeatedly for calculations of the costs and projected load demand figures. PSC officials did not provide this information and stated they did not have to update this information until their legislatively mandated July 2024 comprehensive review. While PSC did provide this report to the auditors in January 2024 in response to our preliminary report, officials were unable to show the actual calculations and support of what information was used to determine that New York would achieve 66% of the State’s projected 2030 electricity load through renewable sources.

- As mentioned previously, the Department is using the [Power Grid Study](#) as the basis for moving forward in addition to ongoing modeling and analysis through 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. Also, as already noted, the October 2020 [CES Modification Order](#) (page 24 of the document; page 27 of the PDF) considered a 20 percent attrition rate, far above the historical attrition rate.
- The Department leverages current data as part of its electric system planning processes. For example, as part of the CGPP initiated by the Commission under Case [20-E-0197](#) on August 17, 2023, the New York State Utilities and Long Island Power Authority (LIPA) will develop detailed short circuit and power flow models using NYISO’s most recent Federal Energy Regulatory Commission (FERC) Form 715 database of system models and auxiliary files and the NYISO Load and Capacity Data (referred to as the Gold Book) as part of this long-term transmission planning framework to achieve the goals of the CLCPA.
- NYSERDA’s competitive solicitation process is the mechanism to procure renewable energy credits (RECs) to meet the CLCPA goals, and the Department regularly monitors NYSERDA’s compliance with procurement schedules and requirements regarding these goals. For example, the CES Modification Order requires that NYSERDA conduct annual solicitations that goal to solicit an average of 4,500 gigawatt hours (GWh) of land-based renewable energy per year through 2026 to meet the 70 by 2030 goal.

### **Incomplete Cost Assessment and Ratepayer Burden**

*“As New York pursues clean energy programs to fulfill the obligations of the Climate Act, it is imperative to identify sources of funding other than increased utility rates to mitigate impacts on ratepayers. Relying primarily on customer rate assessments to pay for these programs may increase the number of utility customers in arrears on their utility bills and/or Climate Act goals will not be met timely due to the lack of availability of resources.*

*The 10-point plan announced in October 2023 indicates that cost savings realized through federal*

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*support may be shared with ratepayers; however, PSC may need to pursue additional ideas to address expected rate increases as the State pursues Climate Act goals.” OSC Draft Report page 20*

**Department Response:** Under state law, the only mechanism the Commission has at its disposal to pay for CLCPA implementation is through its ratemaking authority and authorization of ratepayer funding. The Legislature, through the CLCPA, did not identify funding sources to achieve the goals and did not authorize any other means for the Commission to achieve the CLCPA goals. That said, and as documented above, the Commission has leveraged alternative funding sources, including federal funding and State and local government initiatives that reduce ratepayer costs. The Department welcomes any efforts by the OSC to identify or obtain additional sources of funding to meet the CLCPA goals and will incorporate any such funding into future orders to offset ratepayer costs.

**State Comptroller’s Comment** – PSC’s mission is to ensure just and reasonable rates. Accomplishing that mission relies on PSC providing stakeholders with transparent, accurate, and complete information, including on costs, and to provide alternatives, including additional sources of funding to meet the CLCPA goals.

**Reliance on Fossil Fuels**

*“While PSC noted they can simply suspend or modify requirements of the renewable energy program to maintain a safe and adequate electric supply, that does not come without consequences, including potential additional increases in the cost of electricity. Further, the default plan is to rely on fossil fuels. This means that, in addition to the costs of incentivizing new renewable generation and building new required transmission infrastructure, fossil-fuel generation must be kept available, which may increase costs to ratepayers. Again, this adds to the growing costs of the transition, which so far have been almost totally borne by the ratepayers.*

*Undertaking a project without knowing the costs increases the risk that the project will not succeed. The absence of cost estimates also makes it difficult, if not impossible, to assess its impact on New Yorkers, including those who are currently struggling to pay their utility bills and who have faced rising costs over the past two decades. PSC officials stated that they expect the cost for renewable energy to decrease as time goes on, but that is not a certainty at this point. Further, PSC has not established a timeline for decreasing costs of renewable energy.” OSC Draft Report page 21*

**Department Response:**

- The State’s plan is to pursue all sources of renewable energy resources as the transition from fossil fuel based electric, heating and transportation systems continues. The Department and Commission have established successful processes that allow us to be flexible to changing market conditions, incorporate stakeholder feedback into its decisions, and ensure we continue to take advantage of innovation and leverage of private sector investments. In sum, we are not waiting until the benchmark dates to determine if the goals are achieved. Instead, we are proactively taking action to mitigate the risk of not meeting any of the statutory deadlines set forth in the CLCPA, including a multifaceted strategy where we are implementing clean energy initiatives across virtually every sector of the

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State’s economy. This includes issuance of the [CES Modification Order](#), along with the creation of the [CGPP](#) which ensures the grid infrastructure is in place to enable the transition.

- The Commission strives to maintain affordability, and efforts to prioritize affordability are prime drivers in defining the structure of competitive procurement processes, and investments in supply chain to continue to increase the cost-effectiveness of these investments.
- The Commission’s [Energy Affordability Policy](#), which provides income-eligible households with discounts on their utility bills, is also a critical tool to help balance affordability with the increased costs associated with meeting the CLCPA goals. Importantly, in every budget enacted by Governor Hochul since she took office there have been State appropriations – totaling approximately \$500 million – provided to the Department to help offset rising ratepayer costs associated with CLCPA and other factors.
- Additionally, the Department, in coordination with other State agencies, works to advocate to the federal government for additional external funding and to create partnerships with other neighboring states to try to lower the overall costs and improve the efficiency of clean energy investments. See one example of this here for the Northeast States Collaborative on Interregional Transmission: <https://www.utilitydive.com/news/northeast-states-doe-interregional-transmission-collaboration-iso-ne/653298/>. As noted above, the PSC has successfully incorporated New York State and local government initiatives to reduce ratepayer costs of achieving the CLCPA goals.

### **OSC Recommendations and Department Responses**

**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.” OSC Draft Report page 27*

#### **Department Response:**

The Department has already begun the required comprehensive review of the CLCPA . Public Service Law § 66-p(3) establishes reasonable timeframes by which the Commission is to undertake “a comprehensive review of the program established pursuant to” PSL § 66-p(2), specifying that the Commission’s first review is required by “[n]o later than” July 1, 2024, and reviews thereafter are to be undertaken on a biennial basis. Well in advance of the July 1, 2024 deadline, the Commission issued a CLCPA Initiating Order in May 2022, to track and assess the progress made towards meeting the CLCPA goals and, provide policy guidance as necessary for the additional actions that may be needed to help achieve the goals. Department staff provided the first [Annual Informational Report on Overall Implementation of the CLCPA](#) (First CLCPA Report) to the Commission in July 2023, which included a summary of recent efforts and outcomes in relation to several key areas of implementation of the CLCPA including renewable electricity and energy storage, transmission, energy efficiency and building electrification (EE/BE), and transportation. The First CLCPA Report also provides an overview of the State’s progress toward achieving the goals established under the CLCPA, an understanding of the overall energy savings,

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energy generation, and emissions reductions across all of the Commission's CLCPA-related programs, a summary of electric and gas utility cost recoveries to date associated with such programs, and an understanding of gas and electric utility ratepayer impacts for the programs.

The Commission relies on NYSERDA's competitive solicitation process as the mechanism to procure RECs to meet the CLCPA goals, and the Department regularly monitors NYSERDA's compliance with procurement schedules and requirements regarding these goals. For example, the CES Modification Order requires that NYSERDA conduct annual solicitations that are planned to solicit an average of 4,500 gigawatt hours (GWh) of land-based renewable energy per year through 2026 to meet the 70 by 2030 goal. Of note, consistent with the CES Modification Order NYSERDA factored in a 20 percent attrition rate when determining the annual number of MWhs to procure. The Commission initiated a biennial review process in the CES Modification Order, to formally evaluate the performance of the competitive solicitations administered by NYSERDA and to identify opportunities to improve the program. The CES Modification Order also created a new CES Tier 4 related to renewable energy either located in or directly injected into New York City. The CES Modification Order resulted in NYSERDA soliciting two projects, one of which (the Champlain Hudson Power Express) is under construction and expected to inject up to 10,402 GWh into New York City annually. More recently, the Commission denied petitions filed by renewables 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.

**State Comptroller's Comment** – As noted on page 15 of our report, the two projects resubmitted bids under the 2023 solicitation for offshore wind projects and were provisionally awarded contracts. The amount of energy they proposed to provide (between 1.65 GW and 1.82 GW) was the same, but the price increased over 30% and the projects' operational dates were pushed back from 2024 to 2026. Additionally, as of April 2024, it was announced that three other offshore wind projects totaling over 4 GW of capacity that were provisionally awarded under the 2022 solicitation could not reach a final agreement and will not be entering into a contract. A large portion of New York City's renewable energy is expected to come from offshore wind, so these issues could dramatically affect the achievement of Climate Act goals.

Department Staff thereafter worked closely with NYSERDA to develop a [10-Point Action Plan](#) that outlines steps the State is taking to support and grow the renewable energy sector. These and other actions will be reflected in the comprehensive review being undertaken pursuant to PSL § 66-p(3). In sum, the Department is not waiting until the benchmark dates to determine if the goals are achieved. Instead, the Department is acting now to mitigate the risk of not meeting any of the goals set forth in the CLCPA, including a multifaceted strategy to implement clean energy initiatives across virtually every sector of the State's economy.

**State Comptroller's Comment** – It should be noted that our audit was engaged in January 2022 with the objectives to determine if PSC and NYSERDA adequately planned to achieve the Climate Act goals, followed proper procurement practices for projects designed to reach the goals, and appropriately tracked and monitored progress toward meeting those goals. PSC issued a CLCPA Initiating Order in May 2022 (5 months after our engagement and 2 years after the CLCPA was enacted) to track and assess progress toward meeting the CLCPA goals, and the Department staff provided the first Annual Informational Report on Overall Implementation of the CLCPA to the PSC in July 2023. In October 2023, the State and NYSERDA issued their 10-point plan.

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**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.” OSC Draft Report page 27*

**Department Response:**

The Department does continuously analyze the existing and emerging risks and known issues and makes adjustments to minimize the impact on achievement of the CLCPA goals. We apply an ongoing monitoring and continuous improvement approach, including through the First CLCPA Report mentioned earlier in this response, that includes a detailed review of annual achievements made under every applicable effort, followed by recognizing and acting on any necessary changes moving forward. The Department and Commission have established successful processes that allow us to be flexible to changing market conditions, incorporate stakeholder feedback into decisions, and ensure we continue to take advantage of innovation and leverage of private sector investments. We are acting now to mitigate the risk of not meeting any of the statutory deadlines set forth in the CLCPA, including a multifaceted strategy to implement clean energy initiatives across virtually every sector of the State’s economy. This includes issuance of the [CES Modification Order with revised guidance for renewable energy procurement](#), along with the creation of the [CGPP](#) which ensures the grid infrastructure is in place to enable the transition.

**OSC Recommendation 3:** *“Analyze the expected renewable energy generation 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.” OSC Draft Report page 27*

**Department Response:**

The Department and NYSERDA are constantly analyzing the status of renewable energy generation projects and contracts to monitor progress and compliance with milestones. NYSERDA is the administrator of the Commission’s CES program and is the direct counterparty to all the renewable generation REC contracts. In that capacity, NYSERDA 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 § 66-p, Department Staff continuously engages with NYSERDA staff regarding its role as administrator of the CES program, including 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, attrition rates and parallel procurement project development amongst offshore wind, large scale land-based renewables, and distributed solar. NYSERDA and the Department take into consideration the possibility of project cancellation, using a 20 percent attrition rate, which is higher than the historical average of 6 percent. By using

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the more conservative 20 percent attrition rate, NYSERDA and the Department are able to factor in macroeconomic changes that may unexpectedly impact its entire portfolio. 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.

**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.” OSC Draft Report page 27*

**Department Response:**

The [First CLCPA Report](#) and associated presentation before the Commission included both an historic look back at the cost and benefits to transition to renewable energy sources, as well as future projections of the same. This report will be updated pursuant to the first biennial comprehensive report required under PSL § 66-p(3), no later than July 1, 2024. Additionally, the Department anticipates providing a comprehensive review of the work toward achieving the CLCPA renewables goals annually, rather than biennially as required under PSL § 66-p(3).

**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.” OSC Draft Report page 27*

**Department Response:**

The Public Service Law requires the Commission to ensure that rates are just and reasonable; thus, every Commission decision considers impacts to ratepayers. For this reason, when clean energy programs are initiated, there is a cost and bill impact included for the Commission to consider in its ultimate decision making. 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 investment.

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 through its utility rate-making power. The Commission does not have taxing authority, bonding authority, or other vehicles to pay for significant investments necessary to comply with the CLCPA. As outlined in the First CLCPA Report, to date the majority of the State’s climate investments related to achievement of the CLCPA are being supported by utility ratepayer funds, so 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.

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Ms. Nadine Morrell

July 1, 2024

In addition, the DPS and other State agencies, advocate for federal funding opportunities to the greatest extent possible and encourage State and local government clean energy initiatives that have the effect of lowering ratepayer costs as evidenced above. We do note that many of the renewable generation projects are able to take advantage of tax credits under the IRA, which expanded prior federal credits and created new ones, which results in lower costs of procurement of RECs and distributed solar.

- The Commission requires NYSERDA to include provisions in REC contracts that result in the sharing of any new alternate funding dollars that become available after bidding has occurred and REC awards have been made, meaning that a percentage of the funding is used to reduce cost to ratepayers for the project.
- Federal tax credits under the IRA available to renewable developers are summarized [here](#).
- Federal tax credits available for homeowners for clean energy investments are summarized [here](#).
- The IRA included a tax credit monetization option called [direct pay](#) that makes clean energy tax benefits available to those typically excluded from claiming them, such as state and local governments, nonprofit organizations, rural electric cooperatives, and public utilities. This will help provide greater access to federal funding for these entities to lower the cost of project development as part of an all-of-the-above approach to meeting the goals of the CLCPA and building the clean energy economy in New York.
- Expanded under the IRA, [Section 179d](#) of the Internal Revenue Code allows building owners who install new equipment aimed at improving the energy efficiency of their properties to claim a tax deduction to offset some of the costs of the equipment.

In summary, the Department strongly encourages all utilities, government partners, private sector entities, and households to utilize as much of the federal funds now available to achieve the requirements of the CLCPA in an effort to reduce costs for New York consumers, and the Department will continue to account for State and local government initiatives that lower ratepayer costs associated with the CLCPA.

The Department is committed to ensuring all opportunities for improvement are thoroughly assessed and staff is enacting, where beneficial, appropriate changes to operations that are responsive to OSC's recommendations and observations. Thank you for the opportunity to respond to the OSC Draft Report.

Sincerely,



Rory M. Christian  
Chair and Chief Executive Officer

# Agency Comments - NYSERDA and State Comptroller's Comments



**KATHY HOCHUL**  
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July 1, 2024

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Re: Response to the Office of the New York State Comptroller Draft Report: Public Service Commission and New York State Research & Development Authority Climate Act Goals – Planning, Procurements, and Program Tracking – Report 2022-S-4 (May 2024)

Dear Director Morrell:

The New York State Energy Research and Development Authority (NYSERDA) acknowledges receipt of the Draft Audit Report titled “Climate Act Goals – Planning, Procurements, and Progress Tracking,” and is pleased to see the Comptroller’s acknowledgment of the integrity of NYSEDA’s procurement processes and its finding that all of NYSEDA’s Clean Energy Standard-related procurements have been executed in accordance with relevant Public Service Commission orders. NYSEDA prides itself on its integrity, transparency, responsiveness to the market and to a broad set of stakeholders, and to proper and careful stewardship of public funds.<sup>1</sup> We agree with the Draft Audit Report’s confirmation that these principles have been upheld in our procurements and appreciate the report recognizing that NYSEDA has already taken steps to address the feedback provided through the audit.

Insofar as the Comptroller’s observations relate primarily to concerns with early procurements that were cured in subsequent solicitations, which observations relate to anomalous internal recordkeeping that was not outcome-determinative, we appreciate the Comptroller’s detailed eye on these past issues and provide our feedback below.

**State Comptroller’s Comment** – NYSEDA only reviewed the issues found within our judgmental samples and did not perform a complete reanalysis of all proposals. Therefore, NYSEDA cannot definitively say there were no outcome-determinative issues.

<sup>1</sup> Reinvent Albany recently commended NYSEDA for its commitment to transparency as reflected in NYSEDA’s 2022 Transparency Plan, finding that NYSEDA’s plan was among the strongest statewide. See Reinvent Albany, Opening New York 2022 (June 4, 2024), available at [https://reinventalbany.org/wp-content/uploads/2022/03/Opening-NY-2022\\_Rating-70-State-Agency-Transparency-Plans-March-2022.pdf?mc\\_cid=65587e94e2&mc\\_eid=UNIQID](https://reinventalbany.org/wp-content/uploads/2022/03/Opening-NY-2022_Rating-70-State-Agency-Transparency-Plans-March-2022.pdf?mc_cid=65587e94e2&mc_eid=UNIQID).

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### Regarding Recommendations

NYSERDA always appreciates the opportunity to refine and improve clarity in its solicitations to benefit New Yorkers. To that end, NYSERDA thoughtfully considered observations made during audit discussions, and proactively took a number of steps to address the auditors' feedback.

The auditors recommended that NYSERDA (1) adequately document the scoring process, (2) require all evaluators to provide justification for their individual and consensus scores, and (3) develop more complete and specific scoring guidelines for evaluators.

In the Requests for Proposals (RFPs) issued since the beginning of the audit process, NYSERDA has already addressed the auditors' three recommendations and has:

- Improved the thoroughness of documentation regarding the scoring process.
- Required all scorers to provide detailed justification for their scores, and for the consensus scores.
- Developed expanded and specific scoring guidelines for evaluators.

In addition, as noted in the audit report, NYSERDA has also:

- Utilized an aggregation of the scorers' individual preliminary score sheets to populate the scoring rubric used for consensus scoring.
- Eliminated the use of the reference score.
- Engaged an independent external auditor to evaluate alignment among all RFP documentation and processes for the 2022 Offshore Wind awards.
- Along with independent external auditors, reviewed preliminary scores and consensus scores for all RFPs to verify evaluators adhered to scoring guidelines, justified deviations, and only awarded points for eligible economic benefits.
- Required all scorers to certify an affirmation of the final consensus score.
- Required detailed consensus meeting notes describing all discussions for each project viability criteria.
- As we do periodically, re-assessed staffing levels and added qualified resources to better match our capacity to transaction volume.

### General Feedback

The scope of this audit has changed over time. Originally scoped as an audit of The Carbon Free Generation of Energy via notice from the Comptroller on April 11, 2022, the audit was rescoped via letter from the Comptroller on July 13, 2022 to an audit "regarding the tracking and monitoring of progress toward meeting the goals of the Clear [sic] Energy Standard and the Climate Leadership and Community Protection Act and the propriety of procurement practices for projects initiated to meet those goals." The Draft Report omitted the Clean Energy Standard component and now describes the scope as "Climate Act Goals – Planning, Procurements, and Progress Tracking." As the audit examined procurements in the Clean Energy Standard program, we suggest that retaining the Clean Energy Standard reference in the title would be appropriate.

**State Comptroller's Comment** – No changes are needed. As is our normal practice, changes to the audit scope and objectives were shared with agency officials. The draft report simply puts

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the scope of the audit into context—as noted on page 1 of our report, "The Climate Act builds on the 2015 New York State Energy Plan and the Clean Energy Standard."

On a similar scoping note, as the audit has correctly observed (p. 17), NYSERDA and the Public Service Commission are not legislatively charged with singlehandedly implementing the Climate Leadership and Community Protection Act (CLCPA). The CLCPA's emissions targets are state- and economy-wide.

#### **Specific Feedback**

The audit's main points around NYSERDA procurements relate to the opportunity to provide more detailed notes by each individual scorer on a category or sub-category basis. We agree that more robust or detailed explanations could be helpful to the historic record, but do not agree that these are "inconsistencies" (p. 22, header) or that the scores are "unsupported."

**State Comptroller's Comment** – As noted on page 22 of our report, we found the rationales provided for the scores awarded to proposers and for scores that deviated from the established guidelines were not fully or consistently documented. In addition, NYSERDA did not follow certain aspects of its internal procurement guidelines when developing the RFPs, with instances of vague scoring guidance that could have led to inconsistent scoring of proposals. Further, as stated in our report, we found 23 (5%) of the 432 scores awarded for Project Viability deviated from reference scores and evaluators failed to provide sufficient rationale for 20 (87%) of the 23 deviations (page 23), and we also identified variability in scores created by vague and easily misinterpreted scoring guidance in two scoresheet subcategories (page 24).

Indeed, a detailed review of all scores and the proposals finds support for the consensus scores in all instances. Similarly, where the audit notes that further precision in certain scoring criteria (for example, Tier 4's project labor agreement subcategory) is appropriate, we agree that we can improve upon this wording, and also confirm that a review of all consensus scores indicates that scores were, despite any vagueness, supported by the proposals themselves. This is no doubt because robust, in-person discussions among scoring committee members resolve all differences of interpretation that may exist among individual members before scores are finalized.

Likewise, as discussed at length during the audit process, we respectfully agree to disagree with the assertion (p. 23) that scorers must record written justifications down to a tenth or hundredth of a point basis. The detailed scoring rubric provided to all reviewers carefully and thoroughly presents the bounds within which variations in scoring are applicable on a sub-category basis. Additionally, we note that the courts have recognized NYSERDA's numeric scores as a reflection of opinion, absent any further written notations.

We offer a small correction to the audit finding that "Tier 1 procurement RFPs issued in 2017 and 2018 ... did not fully comply with NYSERDA's internal procurement guidelines." See the Draft Report at p. 22. The discrepancy here, which was discovered during the scoring process and which, as the report notes, NYSERDA remedied before awards were finalized, was that a clause in the 2017/18 internal scoring guidance did not comport with the RFPs due to including holdover language from its predecessor program. That errant provision was disregarded, the relevant clause of the RFP observed, and awards were properly made.

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We observe a number of minor inaccuracies in the first paragraph on page 15, the most substantive of which is the projects referenced in the sentence that begins “Two other projects that were canceled resubmitted bids ....” These two projects were not canceled; their contracts remained in place and the contracts were replaced by the new contracts signed on May 31, 2024.

**State Comptroller’s Comment** – We revised our report to note that the two other projects simply resubmitted bids. Additionally, we made other minor changes to clarify our report based on discussions with agency officials after the draft report was issued.

We offer a final clarifying edit to the feedback provided on the Tier 4 process. As the auditors observed insufficiency of justifications, and not the entire lack thereof, where the report discusses “unsupported scores” we believe “insufficiently documented” is more accurate, and where the report notes that justifications “should have been recorded at the time the scorers reviewed the proposals,” we note that such justifications were indeed provided at the time the scorers reviewed the proposals, so we submit that “should have been recorded more fully” is more accurate.

**State Comptroller’s Comment** – We disagree. The scores were not fully supported.

**Conclusion**

In conclusion, in support of Governor Hochul’s 10-Point Action Plan and in advancement of the Clean Energy Standard Program, NYSERDA will continue to procure and advance large-scale renewable energy projects while fostering supply chain growth and scaling up electrification in buildings and transportation to ensure progress is made toward the state’s Climate Act goals. As noted in this audit, NYSERDA has executed its Clean Energy Standard-related procurements in accordance with relevant Public Service Commission orders and we remain steadfast in our commitment to continue to do so into the future using well-controlled processes and serving as good fiscal stewards for New York State.

On behalf of NYSERDA, I thank the audit staff for their detailed and lengthy review of these procurements, and we look forward to continuing our work to advance clean energy for all New Yorkers.

Sincerely,



Doreen M. Harris  
President and Chief Executive Officer

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