



**Comments on the 2022 RES Solicitation Request for Information (RESRFI22-1)  
Submitted by: The Alliance for Clean Energy New York  
July 28, 2022**

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## **I. SUMMARY**

In response to the 2022 RES Solicitation Request for Information (RESRFI22-1, hereinafter, RFI) issued by the New York State Energy Research and Development Authority (NYSERDA) on July 7, 2022, the Alliance for Clean Energy New York (ACE NY) is hereby submitting these Comments concerning NYSEDA's procurement of Tier 1 Renewable Energy Certificates (RECs) through the Clean Energy Standard (CES) program.

ACE NY is a member-based organization with a mission of promoting the use of clean, renewable electricity technologies and energy efficiency in New York State to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Our diverse membership includes companies engaged in the full range of clean energy technologies, but particularly developers of renewable energy projects that participate in NYSEDA's CES procurement program.

**Our Comments can be summarized in these 10 points:**

- 1. Despite numerous and serious uncertainties affecting the renewable energy industry in the U.S. and New York, many which are described in these Comments in detail and are out of the control of project developers or New York State, ACE NY still supports regular annual Tier 1 solicitations from NYSEDA, for a minimum of 4,500 GWh annually through 2026, and we support the RFI's proposed schedule for the 2022 Solicitation. (2.1 – 2.4)**
- 2. ACE NY supports adjustments to the 2022 Solicitation that will favor technology diversity, as this will lead to a more robust and successful award group, and we support use of the Resource Mix Portfolio Risk Factor to achieve this. However, there are issues with how this Factor was applied in 2021 and we suggest that NYSEDA fine-tune its use of geography, transmission, and congestion as part of this Factor. (2.5)**

3. ACE NY supports the Optional Inflation Adjustment Bid Proposal, in the belief that reducing uncertainty in this area – given unprecedented inflationary pressures – will also result in a more robust and successful award group while relieving upward pressure on REC prices. (2.7)
4. ACE NY understands the need to award contracts to more mature projects and supports four of the six proposed changes to the Minimum Threshold Requirements. However, ACE does not believe NYSERDA should require a completed NYISO System Reliability Impact Study (SRIS) at this time, nor do we think it is appropriate for NYSERDA to use DEC permitting staff to predict the success of a project’s permitting process. ACE does support the other four changes to strengthen the minimum threshold requirements. (2.8)
5. ACE supports implementation of the provisions concerning prevailing wage, labor peace agreements, MWBE/SDVOB, and Buy American in accordance with recently enacted state law and encourages NYSERDA to be as clear as possible in how bidders should apply these requirements. NYSERDA should not go beyond what is required in law and unnecessarily put upward pressure on REC prices. (2.9, 2.10, 2.14, 2.15)
6. ACE NY does not support the dollar-based Buy American provisions as they are inconsistent with the findings in Appendix 3, and we believe that the analysis in Appendix 3 is inaccurate for wind power due to the turbine sizes considered. ACE NY also provides a list of 12 important clarifying questions on this topic. (2.14)
7. ACE NY supports the Incremental Economic Benefits Categories and makes suggestions to avoid certain duplicate penalties. (2.13)
8. ACE NY believes that the sub-categories awarded up to 20 non-price points (project viability, operational flexibility, peak coincidence) should be reduced and narrowed to 4 or 5 topics to increase the impact of the remaining sub-categories. As minimum thresholds for some criteria are increased, it is less important and less effective to also award points for the same criteria in the scoring process. ACE NY does not support the Revised Evaluation for Permitting Sub-Category. (2.16)
9. ACE believes that use of the non-viability determination, because it is subjective and non-transparent, should be rare and judicious. Especially as minimum threshold criteria are strengthened and evaluation for non-price criteria becomes more focused, this determination hopefully will not need to be used frequently. Further, when this mechanism is used to assess deliverability and curtailment issues, the consultation with the NYISO should be more transparent to developers and should be consistently applied. (2.17)
10. On the topic of transmission, we highlight throughout these Comments both the great importance and complexity of this issue. NYSERDA rightly wants to prioritize projects that will be deliverable and will not cause undue curtailment of other power generating facilities, but it is largely outside of NYSERDA’s ability to fix the transmission and distribution constraints, and to do so in a procurement program can cause unintended consequences. This could be particularly problematic given the reactive (as opposed to proactive) approach to transmission planning used today, such that the system cannot be expected to be built out to projects and proactively alleviate congestion. ACE NY supports the RFI’s proposals to strengthen minimum deliverability requirements (2.8.3) and evaluate deliverability (2.16) as well as the Optional Elective Committed Local Transmission Upgrade Bid proposal (2.18), but we caution that congestion and curtailment is becoming a geographically widespread issue and must be solved by actions of the Commission, NYISO, NYPA, and other parties through PSC Case 20-E-0197, the Public Policy Transmission Needs Planning Process, and other processes.

## II. RESPONSES

### 2.1 RESRFP22-1 Schedule

In RFI section 2.1, NYSERDA raises questions regarding the schedule for the next Tier 1 RFP, asking:

- What, if any, factors should NYSERDA consider when setting the schedule for RESRFP22-1, including the RFP issuance date, open period, Step One Eligibility Application deadline, and Step Two submission deadlines?

NYSERDA's issuance of annual and predictable Requests for Proposals (RFPs) has been positive for development of renewables in New York, providing a stable and predictable market for growth. ACE NY urges NYSERDA to strive to maintain this annual schedule. While the issuance of the 2022 RFP is currently delayed, the start-to-finish timeframe outlined in the RFI is similar to the 2021 RFP, which had robust participation and worked for the industry. Notably, the proposed 2022 timeline keeps the Step Two Bid Proposal open for approximately two months, which seems prudent given the level of uncertainty in today's market.

- In particular, what timing for RFP issuance and Proposal submission would be most conducive to obtaining viable, appropriately de-risked, and competitive Bid Proposals in 2022?

Unfortunately, 2022 has seen historically high levels of uncertainty in the renewables industry, and business writ large. Inflation is historically high; federal renewables tax credit extensions (or additions) are pending and unclear; and solar development was brought to a crawl by significant tariff issues. Of these three things, none are likely to have resolution before the proposed release of the 2022 RFP, with the possible exception of federal tax policy in light of late-breaking developments regarding the Inflation Reduction Act of 2022. Extension or supplementation of federal tax credits for renewables could have some clarity by the end of the year (see answer to question below for details). A preliminary determination on circumvention on solar tariffs is expected in August or September of 2022, but a final determination is not expected any earlier than March of 2023. It is also incredibly difficult to say what will happen with inflation — whether it will improve, get worse, or stay the same. Balancing the desire for regular, predictable procurements by NYSERDA with the uncertainty around federal tax policy, inflation, and trade policy, it seems that an RFP starting in early fall and ending early next spring, as proposed in the RFI, helps keep things moving along, but provides enough space between the RFP milestones that adjustments could probably be made if a major economic driver changed in upcoming months. In short, we agree with the proposed schedule and think it is likely the best that can be done given all the uncertainties.

- What timing considerations, if any, should be accounted for with respect to the proposed transmission solutions (e.g., Phase 1, Phase 2A, Phase 2 solutions) filed by Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, and Rochester Gas and Electric Corporation in the PSC's Power Grid Study Proceeding (DPS Case 20-E-0197)?

To date, the PSC has only issued an order on National Grid's phase 1 projects — no other transmission owners' phase 1 projects, and zero phase 2 or phase 2A projects have received a PSC determination. Further, the timing of future transmission orders is not clear. However, it does seem likely that the PSC will be making determinations on transmission upgrades for some time to come, so it is ill-advised to stage the 2022 RFP relative to the approval of the various transmission proposals. Instead of changing the timing of the RFP relative to transmission dockets, NYSERDA should consider adapting its evaluation process to account for approved, new transmission at the time the RFP is released and how it impacts the proposed projects (e.g., interconnection costs, curtailment...). Additionally, NYSERDA could rely on the New York Independent System Operator (NYISO) model that will be in place at the time of their solicitation review for the higher voltage and some PSC-approved set of lower voltage transmission and distribution (T&D) system assumptions. At a minimum, whatever assumptions NYSERDA makes regarding transmission impacts on projects should be public information.

In summary, while NYSERDA may wish to have the Phase 2 projects approved before evaluating bids, it would not be wise to modify the proposed schedule when the timing and scope of the Commission's approval of Phase 2 projects is unknown. As an alternative, ACE NY would like to respectfully request that the Commission act on the Phase 1 and Phase 2A projects as soon as possible to inform NYSERDA's evaluation of the bids submitted in response to the 2022 RFP.

- What timing considerations, if any, should be accounted for with respect to the forthcoming final recommendations to be published by the Farmland Protection Working Group (FPWG)?

As stated on its website, the Farmland Protection Working Group intends to provide its final recommendations in "late 2022." While it will be beneficial to proposers to have the recommendations before they submit their Step Two Bid proposals in January 2023, it is likely not critical. Presumably, if the bid process starts before the recommendations are issued, the 2022 RFP projects would not be subject to any new regulations or requirements resulting from the FPWG recommendations in any case. Additionally, it is possible some of the recommendations will require legislative action in 2023, so they would still be uncertain until June of 2023.

- What timing considerations, if any, should be accounted for with respect to the potential expansion of federal tax credits (Production Tax Credit and Investment Tax Credit) that may be afforded to eligible Tier 1 technologies?

Both the Production Tax Credit (PTC) and Investment Tax Credit (ITC) require Congress to take action to extend their benefits to current and future years. In 2020, Congress extended both the PTC and the ITC. The PTC, which provides a per kWh tax credit for the first ten years of electricity produced by a wind project, was extended at 60% its full value for one year, expiring Dec 31, 2021. The 2020 ITC extension "froze" the solar credit at 26% until December 31, 2022. In 2023, the ITC drops to 22%, then it drops again to 10% in 2024. All projects receiving the 26% or 22% ITC have an in-service requirement of 2025, after which point "safe harbor" provisions are no longer in effect.

For much of this year, Congress has debated extending both the PTC and the ITC (and doing so retroactively to January 1, 2022 for PTC), as well as authorizing numerous new renewable energy tax incentives, within the 2022 budget reconciliation bill. Generally, clean energy advocates were hoping a reconciliation bill with renewable energy provisions would pass before Congress' August recess, and one could be passed as late as the September 30<sup>th</sup> deadline for 2022 budget provisions.

If Congress fails to include renewable tax credits in a reconciliation bill, which was looking increasingly likely but may have recently changed with the Inflation Reduction Act of 2022, it could pass a "tax extenders" bill like it did in 2020, continuing the PTC and ITC for a few more years at current (or recent) levels. Notably, the 2020 extension was passed in late December at the tail end of the lame duck session. It is unclear if Congress will have the interest or will to pass a tax extenders bill after the November election. It is also unclear whether Congress, if it acts at all, would simply extend the ITC and PTC or link it to other new requirements that could add costs to projects, such as Buy American, labor requirements, or vessel requirements that would affect offshore wind costs, for example.

In either case—whether renewable tax provisions are passed (or not) in a reconciliation bill, or a tax extenders bill—both deadlines (September 30 and December 31) are before the Step Two Bid Proposals are due in January of 2023, as proposed in the RFI, which will allow proposers and NYSERDA to better understand the economic landscape and factor this understanding into proposed bids.

Finally, though ACE NY members would be open to discussion of potential mechanisms in procurement to respond to uncertainty around the ITC and PTC, such as the opportunity to provide alternative bids, it is too late to have

this discussion prior to issuance of the 2022 RFP on the proposed schedule, so if NYSERDA is interested in pursuing a new approach, it should be for a later RFP.

## 2.2. U.S. Department of Commerce Antidumping (AD) /Countervailing Duty (CVD) Investigation

As detailed in section 2.2 of the RFI, the U.S. Department of Commerce is currently investigating alleged circumvention of existing antidumping and countervailing duty requirements that cover crystalline silicon photovoltaic cells and modules from China. The full investigation, which started in March 2022, could take nearly a year, and if circumvention is found, importers of photovoltaic cells and modules from four nations will have to pay duties, perhaps retroactively. A preliminary finding *may* be issued after August 29, 2022, and a final determination *may* be issued in January 2023. As also detailed in the RFI, President Biden issued a “Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia,” (Declaration) which may help solar developers source solar modules and cells from Cambodia, Malaysia, Thailand, and Vietnam, but will likely have other repercussions. On this topic, the RFI asks:

- What Bid Proposal timing considerations, if any, should be accounted for with respect to the recently launched U.S. Department of Commerce investigation?

ACE NY members report that the Department of Commerce’s investigation has had devastating impacts on the economics of utility-scale solar development. Due to the retroactive nature of the tariffs that could have resulted from the investigation, supply of solar panels from the southeast Asian countries that make up 80% of US imports was effectively frozen. Prices of the remaining panel supply, which is already limited and was already increasing because of supply-chain shortages and inflation, were significantly increased by the Department’s actions and show no signs of decreasing in the timeline needed for completion of various projects. All that said, the proposed schedule outlined in 2.1 will likely be the best scenario *vis a vis* this investigation, assuming there is not a major change between the preliminary and final determinations, and the sooner that projects are able to lock in off-take (contracts), the sooner they are able to make procurement plans to secure panels in a fashion that is resilient to longer-term uncertainty.

- How does the Declaration and outcome of the investigation affect the timing and expected costs of equipment for proposed Tier 1 projects?

Each solar project faces its own unique economic circumstances. While the Commerce investigation has had negative impacts on project economics and supply-chain availability across the board, given the unique size, location, and timeline of the various projects submitted to NYSERDA, timing and expected costs vary on a project-by-project basis. Individual companies will likely comment on this question more effectively than ACE NY.

- Is it the respondent’s intention to purchase equipment prior to the expiration of the 24-month period referenced in the Declaration? If yes, please address how this is feasible and the risks associated with this strategy. If no, please explain the current strategy for equipment purchase and obtaining module supply agreements for projects intending to participate in the next Tier 1 solicitation.

While this question is directed more to an individual solar developer than the industry as a whole, ACE NY will generally state that the Declaration has provided suppliers with some certainty needed to resume production of panels and, as a result, developers will be purchasing solar panels for the 24-month period afforded to them by the Declaration. However, the Declaration does not relieve the increased panel *prices* that are a result of the Commerce investigation’s initiation. The President’s Proclamation was announced two months after the Commerce investigation was initiated, and it takes several months for panels to be procured and shipped to the United States. In addition, there is significant risk that if the Department of Commerce decides in favor of the petitioner, this will further increase panel prices and inject additional uncertainty into the marketplace.

- What type of relief (equipment cost, bid price, project development timelines), if any, does the Declaration provide to developers intending to Bid Proposals to the 2022 Tier 1 solicitation? Why or why not?

The Declaration has allowed panel purchasing to continue but does not address the significant price increases or production delays that were the result of the initiation of the investigation. Furthermore, there remains a cliff around the two-year term of the Declaration at which point tariffs may come into effect, which is accelerating purchases ahead of this period to avoid the risk of paying tariffs after the Declaration period, which is also putting pressure on panel prices. As such, the Declaration provides limited certainty and there are lingering impacts to Commerce's decision to initiate an investigation even for the period that the Declaration is in effect.

### 2.3. Defense Production Act

As explained in the RFI, at the same time there is a two-year halt of solar tariffs from four southeast Asia countries, the Biden Administration invoked the Defense Production Act (DPA) to support US-made solar by encouraging domestic equipment in federal procurements. A June 6, 2022 announcement from the White House estimated that invoking the DPA would bring 10 GW of new solar panels over the next ten years. On this topic, the RFI inquires:

- In what way will the DPA provide relief to solar projects developing in New York?
- In what way will evoking the DPA stimulate domestic production in the United States?
- Will ramping up production using Defense Production Act powers require funding from Congress?

The move to use the DPA to support domestic manufacturing for grid equipment is positive and could help address supply chain disruptions that developers have experienced over the last 12 to 24 months. The use of the DPA could shorten lead times for supplies, which would allow developers to plan with more certainty. But the impact will be gradual and limited.

Evoking the DPA, and, specifically, giving super preference to US-made solar in federal procurement will, in the near term, accelerate domestic production. In the longer term, enhanced domestic production could displace solar imports. On the other hand, the White House estimate of 10 GW of solar panels over ten years illustrates the limited nature of the impact and the length of time it will take to achieve it (compared to, for example, NY's goal of 10 GW distributed solar by 2030).

On the third question, our opinion is yes. While all the steps taken so far are encouraging, the impact of the DPA is still limited by its budget — a few hundred million dollars — and by the fact that the authorization can easily be revoked. To establish a long-term impact, the DPA will need much more funding.

- How can NYSERDA encourage domestic solar equipment manufacturing in New York State?

We assume that if a project used an in-state supplier, including a domestic solar equipment manufacturer in New York State, that project would be awarded additional evaluation points under the non-price criteria related to short-term and long-term economic benefits. We support this approach. This is a strong incentive for a developer to search for and use an in-state manufacturer, but may not be, on its own, and adequate pull to bring a new manufacturer to NY. That is going to require concerted efforts outside of NYSERDA's CES procurement program, pursued by NYSERDA with Empire State Development, and the Legislature. We strongly recommend that New York establish aggressive tax policies that will attract both solar developers and solar recyclers to New York, and we would welcome the opportunity to work with NYS agencies toward this goal.

## 2.4. Forced Labor Prevention Pledge

This section of the RFI focuses on the need for an ethical and sustainable supply chain, which is a priority for NYSERDA and for the solar industry. NYSERDA is proposing to require all bidders to sign the Solar Energy Industry Association's (SEIA) Forced Labor Prevention Pledge (Pledge). The RFI asks:

- If your company has not signed the Pledge, what are some of the concerns associated with the Pledge?

Again, this question is geared towards individual companies rather than the whole renewable industry, but ACE has the following comment: Many ACE NY member companies have signed the SEIA Pledge, and ACE NY supports the development of an industry-led solar supply chain traceability protocol as a tool for identifying the source of primary raw materials and inputs and tracking their incorporation into finished products, including solar modules. ACE NY and its member companies firmly believe that to the extent to which human rights are unprotected by nation states, business entities can take positive steps to protect human rights in the supply chain pipeline, through the adoption of an industry-led solar supply chain traceability protocol.

ACE NY also acknowledges that this is a complex international issue. Human rights are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, color, religion, language or any other status. Every individual is entitled to human rights without discrimination. Many of ACE's members have expressly pledged support for human rights, but there is a significant diversity in those pledges, and not all have signed the SEIA Pledge, potentially in the belief that it does not capture the nuance of the issue. Also, some awardees might not be interested in signing the Pledge as it does not go far enough. And, as it is a new and evolving issue, some companies are still evaluating the Pledge and have not yet signed.

Our recommendation is that if NYSERDA requires the signing of the SEIA Pledge, that requirement be applied later in the process, such as at the time of contract signing or at the time of panel purchase, to allow this issue to evolve while not reducing competition in the 2022 RFP.

## 2.5. Solicitation Resource Mix

Section 2.5 of the RFI articulates that NYSERDA plans to "increase the emphasis on achieving an award group with a diverse resource mix that will complement the existing fleet of operating renewable energy generators" and the contracted, but not yet operating, projects. This will be accomplished by employing the Resource Mix Portfolio Risk Factor, which is described in the 2021 RFP (Section 6.2, Portfolio Risk Factors). On this topic, the RFI asks:

- Should NYSERDA increase or decrease the solicitation target for RESRFP22-1 as compared to RESRFP21-1? Why or why not? See the NYSERDA Strategic Outlook 2022-2025, Renewable Energy Section, for a summary of the distributed and largescale renewables programs underway by NYSERDA and an outlook on future statewide load.

We agree that New York should "*Continue the sprint toward and past Climate Act goals*" as stated in the NYSERDA Strategic Outlook on page 25. It also expresses the need for "*roughly 16 GW of large-scale solar, approximately 4 GW of onshore wind, and at least 6 GW of offshore wind*" to be online by 2030 to meet the mandates. These figures assume NYS will achieve its energy efficiency goals; while the Outlook explains that installed plus queued efficiency measures currently get us 44% of the way towards those goals (Outlook, page 33) and assume that existing renewable energy generators built before 2015 will keep their RECs in New York, though we know that is not reflected in current trends. For these reasons, ACE NY strongly supports a 2022 RFP solicitation amount of *at least 4,500 GWh* annually as required by the CES Modification Order. Given NY's aggressive electrification goals and the economic issues mentioned elsewhere in this response (which may increase project attrition), as well as

the estimate of needed renewable resources included in the NYISO's recent (but still draft) System and Resources Outlook,<sup>1</sup> ACE NY recommends an increase in the solicitation target for the upcoming three solicitations.

- What benefits or risks should NYSERDA and DPS consider when choosing to employ or not employ the Resource Mix Portfolio Risk Factor to achieve an award group with a diverse resource mix?

First, we support use of this Factor to facilitate technology diversity, but we believe there were issues with how NYSERDA applied this Factor in the past with respect to transmission issues. It is unclear from this section of the RFI exactly how NYSERDA plans to change how it applies the Resource Mix Portfolio Risk Factor. Second, Section 6.2 of the 2021 RFP highlights four potential benefits that could motivate NYSERDA to adjust the portfolio using this approach. These can be summarized, in short, as: more geographic diversity, more technology diversity, less curtailment, and less transmission costs or impacts. While all of these are important, ACE NY suggests that geographic diversity may be less inherently important, and the benefits are largely captured through consideration for the transmission and curtailment components. ACE suggests their interactions be considered when choosing to employ this Factor or not. For example, if the projects are geographically concentrated it is probably because that is where there is headroom capacity, transmission infrastructure, and other good characteristics for development. There isn't a good reason to adjust an award group away from moderate geographic concentrations in the absence of material congestion/transmission costs, particularly given the significant amount of renewables development that New York needs, such this factor should not be attributed material weight. Third, it seems that the other important changes to the RFP concerning transmission proposed in sections 2.8.3 and 2.18 should, in theory, make these transmission benefits less important to examine through the Resource Mix Portfolio Risk Factor mechanism. Finally, if it is found that awarding new contracts in a particular geography would create curtailment, this should not function to wholly disqualify the prospective project. Instead, the costs of this curtailment or cost of mitigating this curtailment, whichever is lower, should be considered in the use of this factor. If modest curtailment would result, this should not disqualify a project but instead be considered as an adder of sorts to project costs. If material curtailment would result but could be mitigated through modest cost system upgrades or non-wires alternatives, the cost of these upgrades should be considered in assessing the competitiveness of projects instead of the cost of curtailment. However, in this case, mitigation costs should only be considered additive insofar as they are greater than the cost of headroom creation in other contexts, i.e., for Phase 2 projects. If NYSERDA disqualifies projects due to the creation of curtailment for other projects with existing contracts, this will significantly hinder New York's progress towards CLCPA goals. Namely, there is currently no framework for proactively upgrading or expanding the transmission system to anticipate and cater to future projects. This creates a chicken-and-egg issue whereby NYSERDA would stop viable and competitive projects that create congestion from advancing by withholding contract awards, while the system would not be expanded to relieve this congestion in the future unless projects were awarded contracts given the reluctance to proactively consider projects in transmission planning to-date. This dynamic would considerably threaten CLCPA goals, and NYSERDA should consider a measured change in approach to curtailment accordingly.

That said, ACE NY supports NYSERDA's continued use of the Resource Mix Portfolio Risk Factor when making decisions about awarding bid proposals, particularly to encourage a diverse resource mix. To meet the CLCPA goals and to reliably operate the grid with renewable energy, a holistic view and diverse resources are a necessity and should be considered in NYSERDA's review of bid proposals. Portfolio diversity, both geographical and technological, is an important mitigant to risks of attrition or delay. In the analysis of benefits of technology diversity, NYSERDA should consider the costs of batteries or transmission that will be required to support a resource mix limited to assets with the same generation profile. There is also the very real possibility that a future

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<sup>1</sup> [https://www.nyiso.com/documents/20142/32241746/2021-2040\\_System\\_Resource\\_Outlook\\_Report\\_DRAFT\\_v11.pdf/c6d92c07-e6ef-275f-7d37-5eae2c553df7](https://www.nyiso.com/documents/20142/32241746/2021-2040_System_Resource_Outlook_Report_DRAFT_v11.pdf/c6d92c07-e6ef-275f-7d37-5eae2c553df7)



problem can hit an entire technology sector, as illustrated by the issues associated with solar panel tariffs explained in sections 2.2 and 2.3 of the RFI. In these cases, it will benefit New York to have a queue of diverse contracted projects. Another benefit could be the availability of EPC contractor expertise – or just more EPC contractors being available to get the work done – if there is diversity in the technology types. Similarly, too much geographical concentration increases exposure to regional risk factors (a given transmission project being delayed or not proceeding due to opposition or other constraints, or even a change in county tax policy). Overall, technology diversity will improve the resilience of the award group in terms of reaching construction; more technology diversity will reduce project attrition.

- How can NYSERDA best quantify or evaluate the benefits and risks of selecting an award group comprised of a diverse resource mix? What other steps can NYSERDA take in solicitation development and bid evaluation to ensure that future award groups exhibit a diverse resource mix with a generation profile that complements the existing pipeline of contracted large-scale renewables and supports future estimates of statewide load?

In awarding non-price evaluation points for peak coincidence, NYSERDA should not just consider production of the proposed project being coincident with current peak load, but instead either coincident with future peak load and/or with generation capacity gaps resulting from the production profiles of the entire portfolio of current and forecasted renewable asset build. However, consideration for the evolution of peak coincidence in the future should incorporate present value principles and account for uncertainty – coincidence in ten years is fundamentally less valuable and less certain today than coincidence in one year.

- How should other ongoing NYSERDA programs (e.g., the Offshore Wind program, Tier 4 REC program, recent NY-Sun program expansion, transmission solution proposals in Public Service Commission Case 20-E-0197 Power Grid Study Proceeding), and/or future statewide load uncertainty be accounted for when setting future solicitation targets?

First, one of the benefits of the CES Modification Order was the directive to NYSERDA to aim for 4,500 GWh as an annual procurement target for the entire period 2021-2026. Knowing this procurement target and the commitment to an annual RFP has attracted wind and solar developers to the New York market. Although NYSERDA has the flexibility to keep the annual targets open to meet the requirements of other ongoing NYSERDA programs, we strongly urge that NYSERDA adhere to the 4,500 GWh target as an annual minimum for 2022 - 2026. That said, NYSERDA should continue to reevaluate whether the assumptions used in setting those targets are still viable, particularly projected load; success in energy efficiency deployment; success in building and transportation electrification; success in deploying renewables at the distribution level and in other CES Tiers, and construction timelines. Project attrition, timing, costs associated with various resource types, capacity factors, and load profiles of both load and generation need to be looked at frequently. Similarly, success with transmission upgrades and investment should be considered. All that being said, we reiterate our hope that the Tier 1 program targets not be reduced as a result of other NYSERDA programs in the short-term, not least due to the fact that beyond the 2030 target is the looming and even-more-ambitious 100% emissions-free by 2040 requirement in the CLCPA, and the considerable capacity for renewables generation that goal will require, as recently estimated, for example, in the NYISO's Draft System and Resource Outlook 2021-2040<sup>2</sup>. Rather, it would be more prudent to expand procurements in the near-term to hedge against uncertain outcomes in the longer term (load/EE/attrition/etc.), and if NYSERDA finds itself ahead of schedule in several years as uncertainties around 2030 decline, it can pull back on later procurements accordingly.

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<sup>2</sup> [https://www.nyiso.com/documents/20142/32241746/2021-2040\\_System\\_Resource\\_Outlook\\_Report\\_DRAFT\\_v11.pdf/c6d92c07-e6ef-275f-7d37-5eae2c553df7](https://www.nyiso.com/documents/20142/32241746/2021-2040_System_Resource_Outlook_Report_DRAFT_v11.pdf/c6d92c07-e6ef-275f-7d37-5eae2c553df7)

## 2.6. Climate Action Council Scoping Plan

- While RESRFP22-1 will incorporate the relevant recommendations to the extent feasible consistent with PSC Orders under Case 15-E-0302, what, if any, particular recommendations, strategies, or proposals included in the CAC Draft 7 Scoping Plan should be explicitly accounted for by NYSERDA in the development of its 2022 Tier 1 solicitation?
- NYSERDA recognizes that the CAC Draft Scoping plan is in draft form, with a final plan expected to be filed by January 1, 2023. What challenges, if any, do developers face when developing and preparing Bid Proposals to be submitted to RESRFP22-1 while the Scoping Plan is still in draft form?

In our view, NYSERDA's planned 2022 RFP includes the relevant policy priorities identified in the Draft Scoping Plan that are appropriate to be addressed in the context of a NYSERDA CES solicitation. These include, for example, the intention to procure 4,500 GWh on an annual basis through 2026; priority given to certain types of projects (like those that avoid prime agricultural soils, those that promote in-state economic development, those that invest in disadvantaged communities, those that will have better deliverability); and requirements related to a just transition (such as the variety of labor provisions).

The most important aspect of the Tier 1 solicitation process *vis a vis* the Draft Scoping Plan is that the solicitations are held on a regular annual schedule with targeted procurement levels that are adequate to achieve 70% by 2030 and 100% by 2040 mandates, and recognize that renewables development and construction post-2030 will be required even to maintain 70% renewables, given increasing electricity demand from transportation and building heating, let alone the 2040 emissions-free requirement.

## 2.7. Optional Inflation Adjustment Bid Proposals

As described in section 2.7 for the RFI, NYSERDA is "considering introducing a new component to the binding Bid Price submission that would afford awarded proposers a Fixed REC Price or Index REC Strike Price adjustment based on the realized inflation between the time of the submitted Step Two Bid Proposal and the time that the Bid Facility reaches a predetermined milestone to be established in RESRFP22-1 that reflects the closure of construction capital costs." Under this approach, our understanding is that a proposer that wanted to pursue an "Inflation Risk-Adjusted Proposal" (IRAP) would have to provide an Index REC Strike Price or Fixed REC Price that is not indexed to inflation. In addition, Proposers would be permitted to submit IRAPs as Alternate Proposals. That is, the Index REC Strike Price or Fixed REC Price would be subject to a one-time adjustment that would take place at a to-be-determined milestone that represents the closure of construction capital costs. The adjustment to the Index REC Strike Price or Fixed REC Price would be calculated as set forth in the formula below:

$RECA_{adj} = (RECB_{bid} \times Index_T \times Index_B \times P) + (RECB_{bid} \times (1 - P))$ , where  
RECA<sub>adj</sub> = the adjusted price after the milestone (e.g., FID, NTP or COD)  
RECB<sub>bid</sub> = the as-bid REC price at the time of RESRFP22-1 bid submission  
Index<sub>T</sub> = the value of the inflation index @ time of the adjustment milestone  
Index<sub>B</sub> = the value of the inflation index at the time of bid submission  
P = the % of the as-bid REC price subject to the adjustment, between 0-100%, chosen by Proposer

As noted above, the percentage of the as-bid Index REC Strike Price or Fixed REC Price that would be modified by the adjustment would be determined by the Proposer in its Proposal. IRAPs would be evaluated using a risk-adjusted price adder. On this topic, the RFI inquires:

- Would this approach be expected to reduce ratepayer costs by eliminating a risk premium in REC bid pricing, and if so, by how much? Are there modified approaches NYSERDA should consider to counter inflation uncertainty in a way that serves the best interests of ratepayers?

Yes, this approach will be effective in reducing the risk premium that developers are required to price into their bids to account for inflationary pressures to project capital expenditure (CAPEX). Projects are typically bid into a Tier I Solicitation two to four years in advance of Financial Close or Notice to Proceed (NTP), and as we've seen over the last two years, inflation and cost pressures can change dramatically over a period of several years. If bidders can account for changes in inflation through a pre-determined formula, they will bid based on current market, OEM, EPC and other CAPEX pricing forecasts. If inflation changes between the bid date and NTP, contracted bidders and projects will still be able to successfully finance and reach commercialization without returning to NYSERDA for an amendment. Without this pre-determined formula, bidders would either price in a higher risk premium for rising inflation, resulting in increased ratepayer costs, or an insufficient risk premium assuming a reduction in inflation, resulting in projects that are not financeable with no path to commercialization. By incorporating this formula, NYSERDA would provide a clean and equally supportive path for projects that cleared the auction, and as a result, projects that cleared the auction will have a higher success rate of commercialization. The proposed mechanism is concise and easy to understand, and it would seemingly achieve its intended goals as effectively as any other potential approach.

- Describe how an inflation adjustment mechanism could affect the project development timeline and/or viability of proposed Tier 1 Bid Facilities.

This mechanism would make the REC contracts more financeable and increase the likelihood of project commercialization because CAPEX inflationary risk would be nearly eliminated (assuming an appropriate index is used). It would allow executed REC contracts to maintain their economics and commercial viability, particularly if these projects were to encounter lengthier permitting, interconnection, or other development hurdles resulting in the exercise of the Commercial Operation Milestone Date (COD) extension options.

- Please comment on your expectations for near-term and long-term inflation and the impact on your proposal pricing.

This question is more appropriate for individual companies to respond to, but generally, project CAPEX influences what developers will need to achieve the return thresholds that their respective investors and capital markets require. As to expectations for future inflation, there is much uncertainty and a wide range of potential outcomes. Actual inflation will be determined by macroeconomic conditions, ongoing logistics and supply constraints, government actions -- all factors which are nearly impossible to predict, let alone account for in project pricing to NYSERDA. This proposed pre-determined formula would limit the impact of a change in inflation from a bidder's modeled assumptions, reducing the risk premium developers include in their bid.

- What publicly available index or indices are most suitable to capture developers' exposure to inflation during the project development period? Should NYSERDA utilize different indices for different Tier 1 eligible technologies? Please explain the relevance of the index or indices you suggest.

ACE NY members believe that the most appropriate index is the Federal Reserves' Producer Price Index ("PPI") All Commodities<sup>3</sup>, as it most closely tracks actual cost impacts and inflationary pressures on renewable energy projects. The PPI measures the price that producers realize on the market and was formerly called the wholesale price index (WPI).<sup>4</sup> Historical analysis by ACE NY members shows that PPI largely mirrored changes in actual wind and solar project costs over the last two years, and it did so much more closely than did any other commonly referenced index, including the Consumers Price Index.

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<sup>3</sup> <https://fred.stlouisfed.org/series/PPIACO>

<sup>4</sup> [https://fredblog.stlouisfed.org/2021/04/from-ppi-to-](https://fredblog.stlouisfed.org/2021/04/from-ppi-to-cpi/?utm_source=series_page&utm_medium=related_content&utm_term=related_resources&utm_campaign=fredblog)

[cpi/?utm\\_source=series\\_page&utm\\_medium=related\\_content&utm\\_term=related\\_resources&utm\\_campaign=fredblog](https://fredblog.stlouisfed.org/2021/04/from-ppi-to-cpi/?utm_source=series_page&utm_medium=related_content&utm_term=related_resources&utm_campaign=fredblog)

- Should the adjustment mechanism be based on a single defined index or multiple indices? Please provide any suggestions on how multiple indices should be weighted for purposes of tracking key component costs, including calculation examples, and whether these would be applicable to specific or all Tier 1 eligible technologies.

Our opinion is that a single index should be used to limit the administrative burden on NYSERDA. Different indices for various eligible technologies may potentially be more accurate but are not necessary if an appropriate and sufficiently broad index is utilized, such as the PPI. While specific indices targeting key commodity or cost inputs might theoretically prove effective (i.e., polysilicon, steel, lithium-ion, transportation costs, etc.), finding such a transparent and up-to-date index will prove a challenge, especially as many of these data sets are lagging indicators and/or not publicly available.

- What is an appropriate way to set IndexB, the value of the inflation index at the time of bid submission? Could this be an annual average, discrete monthly value, or other?

It should be a discrete monthly value published by NYSERDA at the time of bid (or contracting). Using an annual average would be a lagging indicator, as the calculation used at the time of bid (and adjustment) would average in outdated data and not reflect the most recent months which might show higher (or lower) inflation. The formula proposed by NYSERDA already uses a discrete monthly value for the IndexT and IndexB fraction, and that effectively captures the actual change in inflation between the time of bid submission and Financial Close.

- Should the adjustment mechanism be based on a single defined index? In the alternative, are there commercial advantages associated with an adjustment formula with multiple indices that track key drivers of total project cost? If yes, please provide general guidance on how weighting factors may be established for purposes of tracking key component costs, including calculation examples.

It should be based on a single index to alleviate the administrative burden to NYSERDA. Specific indices for equipment (e.g., modules, turbines) don't exist, are not publicly available, or are lagging indicators of actual costs.

- Is an option of 0-100% for Proposers to choose appropriate, or should a certain factor be fixed in the RFP?

To reduce additional bid complications and administrative burdens, we recommend keeping it fixed. While individual projects and technologies may be subject to slightly different inflationary impacts, we think it is sufficient and most practical to fix the P value at 100%, a number that should largely reflect actual changes in inflationary costs (assuming an appropriate index is used). We are particularly mindful of the administrative burden on NYSERDA of evaluating, administering, and applying varying P values. We also have questions about how NYSERDA might fairly evaluate bids of varying P value, and the many follow-on questions/implications that could be associated with such optionality. If developers don't want to utilize such a mechanism, then they can submit a bid without this inflationary mechanism.

- What is the optimal milestone for determining the price adjustment date? Should the milestone be a fixed calendar date, or the date of a defined event? If a date defined event, should it be FID (in which case, how should that be defined), NTP, COD, or some other point in time and why?

The optimal milestone is FID or Financial Close (FC) when a project has secured the necessary commitments from debt and equity providers and other sources of capital funding to complete construction and facilitate operation and maintenance of the facility. This milestone should be used by NYSERDA.

The milestone should not be a fixed calendar date, as each project will have their own schedule and financing needs, and an individual project's FIC/FC milestone date will shift with development needs and exercising of needed Commercial Operation Milestone Date extension options.

- Will a contract with an inflation risk adjustment clause be sufficient to support executing binding agreements with primary OEMs, and ultimately project financing?

Yes, this mechanism will support the execution of binding agreements by ensuring that a facility will have sufficient revenues and returns to support these agreements and attract financial investment. The mechanism also enables projects to seek a relatively lower cost of capital because the inflation adjusted premium is reduced and capital markets should price in that risk adjusted premium accordingly.

In short, ACE NY strongly supports the inflation adjustment mechanism proposed by NYSERDA in section 2.7 of the RFI and appreciates that NYSERDA recognizes the necessity for both reducing future costs to ratepayers and ensuring project commercial viability in today's economic climate. Projects that signed Tier I contracts over the last few years have been exposed to historic and unprecedented inflationary and cost pressures, and if they haven't already achieved FC/FID, these pressures are putting significant risks on project financeability. Projects at risk represent gigawatts of renewables that NYSERDA and New York State planned for and counted on to achieve their renewable mandates.

## **2.8. Increased Minimum Threshold Requirements**

Each CES Tier 1 RFP has included Minimum Threshold Requirements, and they have become stricter over time. The RFI indicates that NYSERDA is considering again strengthening these minimum requirements, with a focus on permitting, peak coincidence, storage, and co-utilization.

- What benefits and risks are presented to Proposers due to the proposed modifications to the RESRFP22-1 Minimum Threshold Requirements?

The benefit is that projects will be more mature; the risks is that (1) the RFP response will be less robust, and competition will be reduced, and (2) over time, the fact that a project has to be more mature (which costs millions of dollars to achieve in New York) before it can compete for a contract will chill investment in development in New York. This is the balance that NYSERDA must consider in strengthening the project maturity requirements. Also, it would have been best to establish new maturity requirements a year before an RFP is issued, and not weeks before, so that developers can use advance planning and strive to achieve the maturity criteria for an RFP.

### **2.8.1. Interconnection**

In 2021, a bidding facility was required to have paid fees to start the System Reliability Impact Study (SRIS) or System Impact Study or equivalent with the relevant interconnecting control area. In this RFI, NYSERDA is proposing that the 2022 RFP will require that the SRIS be completed.

- For Proposers with projects in development seeking to complete their System Reliability Impact Study or System Impact Study or equivalent with the relevant interconnecting body, by what date will it be feasible for your intended Bid Facilities to reach this milestone? Please provide month and year.

This question is appropriate for individual companies. But more generally, ACE NY understands why NYSERDA is expressing interest in limiting bidders to projects that are farther along in the development cycle, and we share concerns that projects without an SRIS at the time of bid will be challenged to meet the COD requirements in an awarded contract from the 2022 RFP. But that challenge is a result of a significantly delayed process at the NYISO, and the solution should be to fix that problem rather than to modify NYSERDA's procurement to adjust to and accept that delay. Further, the implications of this change should be considered not just for the 2022 RFP, but

also for future RFPs where it will not be helpful given the Class Year schedule, such as it is, at the NYISO. ACE NY raises the following points:

- Requiring a completed SRIS will reduce bidders and competition in 2022 and later years.
- NYISO has been very delayed in completing SRIS's; only 6 have been completed in 2022 and only 9 in total since June of 2021.
- The Class Year process is also delayed, taking significantly more than one year. This needs to be fixed. Similarly, the significant delays experienced by developers in getting SRIS's completed and approved by the NYISO needs to be fixed. Fixing these problems is the correct solution.
- This is a major change in eligibility requirements and should only be applied with much more notice to project developers, such as one year.
- One of the milestones for entering a class year is holding a NYSERDA REC contract, and many projects have used that milestone to enter the class year; this change will disrupt that. That is, right now a project goes straight from the completion of its SRIS to the Class Year Study. With the NYSERDA proposed change, a project will have to: (1) get its SRIS done; (2) then bid into the next NYSERDA solicitation; (3) then wait to become a winning bidder if it cannot or doesn't want to meet the other regulatory milestones offered by the NYISO; (4) then wait for the next Class Year Study.
- The recent FERC Notice of Proposed Rulemaking (NOPR) appears to require a significant re-design of the NYISO interconnection process, and NYSERDA should allow that process to play out before changing how the procurement process aligns with the interconnection process.

On balance, ACE NY opposes requiring a completed SRIS as a minimum threshold. If NYSERDA has a strong need for a later interconnection milestone than fees paid.

- Should NYSERDA take any steps to allow Bid Facilities to remain eligible for evaluation and award if their System Reliability Impact Study or System Impact Study or equivalent is completed between the Step Two Bid Proposal deadline and the completion of bid evaluation?

As described above, ACE NY does not support the requirement that the SRIS be completed for bidding eligibility. But if NYSERDA decides to take this approach, it should apply it after bid evaluation. That is, once a facility meets all other conditions and is eligible for an award, and if the bidder expects to receive their SRIS/SIS study prior to potential bid award, NYSERDA should allow the facility to participate at their own risk. These facilities should not bear the risk of bid fee forfeiture in the event their projects do not meet this milestone prior to bid selection, as that will largely be in the control of the NYISO. This approach does introduce new complications, and our preference would be to not apply the requirement for a complete SRIS at all.

### 2.8.2. Permitting

In the RFI, NYSERDA indicates that it will require Proposers to have conducted both a desktop and a field screening to identify locations of wetlands and waterbodies, such that preliminary measures to avoid and minimize wetland impacts can be identified, evaluated, and implemented.

- What other details will be critical for NYSERDA to provide for Proposers to appropriately detail the requirements of the wetland and waterbodies screening mentioned above?

ACE NY supports this change. Our interpretation is that the requirement would be for a wetlands expert to review desktop assumptions and for a field person to walk the property and do GIS points, but not do a full flagging

delineation with soil samples. It would be helpful for NYSERDA to confirm that. NYSERDA should clarify that this applies to only project footprint and not to an entire land parcel.

### 2.8.3. Energy Deliverability

Section 2.8.3 explains that If a bidder intends to interconnect in an area indicated by the February 1, 2022 Utilities Headroom Data Filing that has either zero or negative headroom, or less headroom than the nameplate capacity of the proposed facility, NYSERDA is proposing that the bidder will now be required to provide an energy deliverability study that shows that the facility is fully deliverable without causing adverse incremental curtailment to currently operating large-scale renewable projects or large-scale renewable projects under development and awarded by NYSERDA. This study will be required to model all electrically local, under development, projects with active NYSERDA contacts as part of the base case development, regardless of interconnection or NYISO Class Year status. NYSERDA will confirm the need for a submitted deliverability study as part of the Notice of Qualification sent to the Proposer if the Bid Facility is deemed eligible to submit a binding Step Two Bid Proposal. NYSERDA will make data associated with operating or under development large-scale renewable projects available to bidders.

- For Proposers intending on submitting Bid Facilities to RESRFP22-1, please describe the resources needed to support an Energy Deliverability study as well as your ability to produce the Energy Deliverability study as described by NYSERDA. What other Energy Deliverability considerations should NYSERDA include in its evaluation of Bid Proposals and project selection?

As part of the RFP materials, developers should be provided the study models used by utilities to calculate existing headroom and post project headroom, including the Phase 1, Phase 2A, and Phase 2 models. This information will ensure the RFP process is consistent with the proposed Coordinated Grid Planning Process (CGPP) and consistency in assumptions and methodology. If these models are not provided, there may be significant variation in results that will make bid comparison infeasible.

Bidders should either be required to, or have the option of, using a model like ProMod in their bid materials to estimate curtailment risk, including economic curtailment risk and an analysis of basis risk and curtailment on already contracted projects. This requirement would likely be helpful to NYSERDA but is a disproportionate burden on smaller projects. Therefore, if it is a requirement, it should only be applied to projects over 25 MW.

- Will Proposers have adequate time to perform the above-mentioned energy deliverability study in time for a mid to late Q4 2022 Bid Proposal deadline? If not, how much time is needed to prepare a thorough energy deliverability study as described?

Proposers will need access to the models used by the utilities. If those models are provided three months in advance, developers will likely be able to perform the Energy Deliverability Study. Without any models, it will require significantly more time to perform the study and will not provide any value since every proposer will use best guess assumptions. Therefore, it is important that this be required as part of Step Two, which we believe is what NYSERDA is proposing. Finally, we want to mention that this process will take longer for companies that do not have this expertise/bandwidth to do this in-house and will use a consultant.

- In order for Proposers to properly conduct an energy deliverability study as described above, what study inputs other than those listed in Open NY (e.g., expected average annual generation) should be provided by NYSERDA?

NYSERDA should request utility study models used to estimate energy deliverability for their Case 20-E-0197 filings.

In sum, ACE NY generally supports this proposal. NYSERDA should allow for energy deliverability studies results to provide evidence that a facility's energy is reasonably deliverable at the proposed POI and the study results should be considered in deciding which bid proposals are accepted. Energy deliverability should *also* consider planned

projects proposed by utilities/transmission operators (TOs) as part of the Phase 1, Phase 2A, and Phase 2 projects, even in advance of a final Commission Order, if at all possible.

#### **2.8.4. Resource Assessment/Energy Production Estimate**

Under RESRFP21-1, Proposers were required to submit a Resource Assessment and Energy Production Estimate that provides a narrative description of any assumed level of curtailment and equipment degradation built into the resource assessment and any projected impacts on the bid facility's energy and/or capacity deliverability. Under RESRFP22-1, NYSERDA intends to strengthen this requirement to require all proposers to further detail the full extent of the curtailment assessments performed to demonstrate the deliverability of the bid facility and clarify explicitly what the degradation assumptions are for the equipment proposed for the facility. Proposers will also be required to explain if and how their 8,760 generation profile differs from their generator-only bid if submitting an alternate bid with energy storage. This requirement would apply to all bidders, not just those subject to the new study requirement described in section 2.8.3.

ACE NY generally supports this proposal. We agree that a resource assessment study showing yearly energy production estimate should be provided as a justification of any energy production estimate provided in the bid. Proposers should also have the opportunity to submit and detail cost-effective solutions to congestion issues, insofar as they exist. If verified by NYSERDA, these costs of congestion relief should be considered as opposed to the cost of congestion that would otherwise occur, and these solutions should be fast-tracked into the appropriate transmission planning process (CGPP/PPTPP). This will be increasingly important as the grid sees increasing levels of congestion, particularly given apparent reluctance to-date to engage in proactive transmission system planning.

#### **2.8.5. Agricultural Land**

Under RESRFP21-1, all Proposers were required to populate and submit the NYSERDA Smart Solar Siting Scorecard to demonstrate the impacts that the proposed Bid Facility is expected to have on active agricultural land and Mineral Soil Groups 1 through 4 (MSG 1-4). The Smart Solar Siting Scorecards from all submitted Bid Proposals will be made public following the submission of Step Two such that they are accessible to the relevant permitting bodies and host communities. In RESRFP22-1, NYSERDA is proposing to post on the solicitation website the project-specific Smart Solar Siting Scorecard along with the Project Summary and Community Outreach Plan. The draft RESRFP22-1 Smart Solar Siting Scorecard is accessible as Appendix 2 to this RFI. Proposers will be encouraged to use recently posted and updated data available at the links below to assess the extent to which their proposed Bid Facility is sited in New York State Agricultural Districts and Mineral Soil Groups classifications 1 through 4 (MSG 1-4): NYSERDA 2022 Soils Data for use in the Large-Scale Renewables and NY-Sun Programs, 2022 NY Soils Data GIS Map.

- What further clarifications or resources can NYSERDA provide to Proposers to assist in the requirement to complete the RESRFP22-1 Smart Solar Siting Scorecard?

NYSERDA should make the Smart Solar Siting Scorecard public if it is consistent with current project permitting requirements. At a minimum, when the information is made public, it should be caveated by a note that the project will change during the permitting process.

ACE NY supports the development of the NYSERDA Scorecard and applauds NYSERDA for creating a diversified working group that debated and created the Scorecard together over the course of the last two years.

We also support the responsible development of solar facilities on farmland recognizing that appropriate spaces for siting large-scale solar projects is limited by access to the grid, available land and supportive landowners. Solar



projects perform most efficiently on flatter land such as those found on croplands, grasslands, and other agricultural lands. The projects are only sited on properties having willing landowners with signed agreements. The continued use of farmland for siting solar projects is an important parameter for the continued progression toward New York State meeting 70% electricity generation from renewable energy by 2030.

The scorecard effort should be informed by the fact that the development of renewable energy, including solar, needs to be prioritized and deployed rapidly to address climate change: 1) to protect New York's food supply from severe/extreme weather events, 2) to prevent sea level rise that threatens the homes and livelihoods in America's largest population center, and 3) to protect the countless species of flora and fauna put at risk because of climate change. Fossil fuel generation is one of largest emitters of CO<sub>2</sub> into the earth's atmosphere. The state recognizes this and looks to the renewable energy industry to help decarbonize the electrical grid. It is important context for the consideration of any new tools to restrict solar development.

ACE NY and its members would like to draw specific comments around particular sections of the scorecard, to maintain some reasonableness in how the scorecard will be operationalized.

**Scorecard Feedback: Crop(s) Production Mitigation Strategies.** Examples are beginning to show that it is possible to grow a variety of crops within a site that is optimized for solar production, for example, at Jack's Solar Garden in Colorado: <https://www.jackssolargarden.com/>. Solar developers can consider growing crops within large scale solar projects however it may not always be feasible to propose such activities within the entire area of a project. Growing row crops like corn and soy might not be feasible within solar projects, but segregating portions of a larger facility to grow other crops that are possible between rows of solar panels and under solar panels can be possible. Some sites might also combine growing crops in some areas with grazing on the balance of the facility.

With this in mind, ACE NY recommends that some flexibility be applied to how the Scorecard evaluates the design of a solar facility in consideration of crops, while taking measure of how the developer intends to include the community to integrate crops within the facility design and operation. The minimization of row spacing could have importance in reducing the amount of overall farmland that is displaced in the design of a solar facility, and might be a more important measure than increasing the potential for farming within the solar projects by creating larger spaces for farming. Also, the reduction of overall panel height and piling can lower the overall cost of electricity by keeping capital and operational costs lower. The total viewshed created by a solar facility is also a consideration for reducing the visual impact of a project within the community.

The farmer-owner or farmer-renter of the land might not always want to continue farming the land being proposed for the solar project, and that is where new partnerships with other farmers in the community or businesses that are specializing their offerings for farming on solar facilities will emerge. These opportunities should also be considered when evaluating the scorecard responses.

**Scorecard Feedback: Community Benefits and Collaboration Strategies.** ACE NY recommends that the strategy 'To the extent feasible, project is consistent with local (county/municipal) agricultural and environmental protection planning efforts' not be used as a pass/fail mechanism. The intent would be for the developer to provide thoughtful rationale for how the site location and design was considered, and why alternatives to comply with the agricultural and environmental planning efforts were not possible.

In conclusion, ACE NY and its members recognize the important considerations that NYSERDA is balancing in the crossroads between agriculture and renewable energy development. Our members are committed to continuing important dialog with the farming community to find ways to include grazing and crop production within solar projects. Compared to other forms of development, when following the department of agriculture and markets

guidelines for solar development, farmland can be protected, farmed during the operation of a solar project, decommissioned and returned to traditional farm uses. Therefore, our members believe that solar can be viewed as a form of farmland conservation.

### **2.8.6. Executive Order 16**

On March 17, 2022, Governor Kathy Hochul issued Executive Order 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia. For RESRFP22-1, NYSERDA intends to require Proposers to submit EO 16 certifications as part of their Step One Eligibility Application in accordance with guidance and certification forms published by the New York State Office of General Services (OGS), available at: <https://ogs.ny.gov/EO-16>.

ACE NY understands the need for the requirements set forth by the Governor’s issuance of EO 16 and the requirement for execution of the EO 16 Certification form by the bidders prior to accepting or executing any State Contract. We note that the OGS Guidelines for EO 16 indicate that “[i]deally, the certification will be among the documents that bidders must return with their bid.” While the certification can be included by Proposers in their Step One Eligibility Application, it is likely that any Project to receive an award in the RESRFP22-1 will form its own project entity prior to execution of its final RES Agreement and thus may need to complete another EO16 Certification at that time. Thus, it would be more efficient to only require an acknowledgement by proposers in their bid materials that the EO 16 Certification is required and will be executed prior to award and or RES Agreement execution. This would be consistent with the OGS Guidelines, which state that the certification is “to be answered by and on behalf of the specific entity that is the counterparty to the contract with the Affected State Entity.”

### **2.9. Prevailing Wage**

NYS Labor Law § 224-d (2) requires that “Covered Renewable Energy Systems” are “subject to prevailing wage requirements” Labor Law §224-d (3) further provides that these prevailing wage requirements do not apply to “construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization.”

- What further detail or clarification would allow stakeholders to better understand the new Prevailing Wage requirements set forth under Labor Law § 224-d?

ACE NY notes that Labor Law § 220(3)(a) provides that prevailing wages must be paid to “laborers, workmen or mechanics.” Covered renewable energy systems will employ onsite construction workers who are likely covered by the provisions above (i.e. a PLA or LPA), but will also employ, for example, individuals providing offsite professional engineering services. We believe that prevailing wage would not apply to these services, but a clarification of the extent that the new prevailing wage requirements will be applied up the development chain and among tangentially involved providers of professional services would assist bidders in accurately determining labor costs. Our view is that it should only apply to on-site construction workers.

## 2.10. Labor Peace Agreements

New York State Public Service Law § 66-r (3) requires that REC contracts for projects over 5 MW require a Labor Peace Agreement (LPA) with a labor organization. The RFI asks:

- What further detail or clarification would allow stakeholders to better understand the new Labor Peace Agreement requirements set forth under Public Service Law § 66-r?

Our understanding is that the LPA requirement applies to operators and maintenance workers that are direct employees of the facility operator, and not consultants or temporary contractors. Confirmation of this by NYSERDA would be helpful.

## 2.11. NYGATS Tier 1 Eligibility Requests

In the RFI, NYSERDA encourages all potential bidders to register their bid facilities in the New York Generation Attribute Tracking System (NYGATS) as early as possible and may do so at any time.

- What further detail or clarification should NYSERDA provide to proposers to encourage participants to obtain a NYGATS Provisional Statement of Qualification or Statement of Qualification?

NYSERDA has consistently made it clear as part of previous RESRFPs that a PSoQ or SoQ is required to satisfy Tier 1 Eligibility. If NYSERDA is experiencing issues with developers submitting those requests on time, or if NYSERDA would like developers to submit those requests earlier, NYSERDA should just specify the deadline.

**2.12. Capacity Accreditation:** This topic will be included in the ACE NY response to the second RFI, due August 4.

## 2.13. Incremental Economic Benefits Categories

The RFI explains that three categories of economic benefits are planned to be retained as part of the incremental economic benefits component of the Step Two Bid Proposal submissions: (1) Long-Term Economic Benefits to New York State, (2) Short-Term Economic Benefits to New York State, and (3) investments/Commitments to Local Economic and Workforce Development. Category 3 is “similar to long-term economic benefits, but inclusive of other commitments that can be included as part of a Step Two Bid Proposal related to economic and workforce development activities.” In RESRFP22-1, NYSERDA is considering allowing new storage technologies, “including nonelectrical battery energy storage facilities such as electrolytic hydrogen or experimental energy storage technologies” to qualify as economic benefits if included in a bid facility, but not eligible for non-price evaluation in the Project Viability and Operational Flexibility and Peak Coincidence subcategory. Investments may include innovative pilot and demonstration storage projects. Second, the RFI states that NYSERDA also plans to continue to more favorably evaluate incremental economic benefits realized by disadvantaged communities. Once the final disadvantaged communities criteria are finalized, they will be incorporated into future solicitations, and an updated map of New York Disadvantaged Communities will be provided.

- Are the descriptions of these categories clear as to what can and should be included in each? For example, under RESRFP22-1, the solicitation intends to clarify that any long-term commitments with firm dollar amounts should be submitted under Category 1 (e.g., Full-time employees needed to run and maintain the Bid Facility whose position lasts 3 years or longer, PILOT, Host Community and Good Neighbor Agreements), and commitments that do not have firm associated dollar amounts (e.g., project labor agreement commitments, internship commitments, apprenticeship commitments) should be submitted under Category 3.

The descriptions are clear for the three categories. As a point of interest there seems to be a couple different ways to calculate the Full Time Equivalent (FTE) of the short-term jobs. While not a contractual obligation, some guidance on how NYSERDA prefers how the FTE of short-term jobs would be helpful.

- Are there any adjustments to this categorization approach that NYSERDA should consider?

Developers have concerns about the impact that failure to timely deliver an energy storage component may have on their Incremental Economic Benefits obligations. In instances where developers include energy storage-related economic benefits in their calculation of Incremental Economic Benefits, but the energy storage component cannot be delivered, it could give rise to a potentially large deficit in a project's Verified Total Dollars. Under the standard REC Agreement, this would result in a long-term reduction in the Monthly REC Price. This potential impact to project revenues creates a material risk that may cause developers to create more conservative estimates of their Incremental Economic Benefits to hedge against this risk and may impact project financing. Developers would therefore like to propose that NYSERDA (a) require developers to separately identify in their proposals the Incremental Economic Benefits attributed solely to the energy storage component of a project (the "Energy Storage Economic Benefits"); (b) identify the Energy Storage Economic Benefits in Schedule 1 to a project's final REC Agreement; (c) revise the standard REC Agreement so that, in the event the energy storage component of a project is not delivered, the financial penalty is limited to reduction of the Index REC Strike Price by the Energy Storage Component Price Reduction Amount,<sup>5</sup> and (d) revise the standard REC Agreement so that the Incremental Environmental Benefits obligation applicable to the project after failure of delivery of the energy storage component is reduced by the amount of the Energy Storage Economic Benefits.

Developers further note that shortfalls to Incremental Economic Benefits and Disadvantaged Community Benefits have the potential to be penalized twice. Shortfalls to the Incremental Economic Benefits result in a potential adjustment to the Monthly REC Price by the percentage of the shortfall for the entire contract term (see Section 5.02(c) of the standard REC Agreement), while shortfalls to Disadvantaged Community Benefits require a direct payment to NYSERDA in the amount of the shortfall within 60 days after Commercial Operation (See Section 6.10(c)). Where a developer includes the Disadvantaged Community Benefits in its calculation of Incremental Economic Benefits (which they are highly likely to do), then failure to achieve the Disadvantaged Community Benefits would contribute to the reduction of the Monthly REC Price *and* result in a direct payment to NYSERDA. Such a duplicative financial penalty is unduly punitive. Accordingly, Developers request that NYSERDA consider amending the standard REC Agreement so that Disadvantaged Community Benefits that are also part of the calculated Incremental Economic Benefits be deducted from any amounts required to be paid under Section 6.10(c).

- Is the distinction between Electrical Energy Storage and New Storage Technologies, such as electrolytic hydrogen or experimental storage sufficiently clear, or are there ways it could be improved?

It would be helpful for NYSERDA to provide a clearer definition of the energy storage technologies. Developers request that NYSERDA provide a list of technologies and technical parameters that would fall under "Electrical Energy Storage". This would then imply that any technology that falls outside the list and/or parameters would then have to be part of "New Storage Technologies". A list of New Storage Technologies would also be helpful, even if that list is not conclusive. Additionally, there are various current and emerging technologies and chemistries related to battery storage itself, and it would be important to clarify whether any form of batteries would fall under "Electrical Energy Storage" or if there are technological limitations. Lastly, while physical forms

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<sup>5</sup> Defined in the standard REC Agreement as "an amount equal to the difference between the Index REC Strike Price or Fixed REC Price, as applicable, proposed by Seller for the Bid Facility with Energy Storage Component and the Index REC Strike Price or Fixed REC Price, as applicable, proposed by Seller for the Bid Facility without the Energy Storage Component."

of energy storage, such as mechanical, pumped storage, and compressed air, may not currently be getting a lot of attention, it would be important to note whether those fall under “Electrical Energy Storage.”

- What resources can NYSERDA provide to Proposers to help with developing incremental economic benefit commitments afforded to Disadvantaged Communities? See Section 8.3.5 of RESRFP21-1 for examples of resources provided to Proposers that participated in the 2021 Tier 1 solicitation.

While the resources provided by NYSERDA in the 2021 Tier 1 solicitation were beneficial, it would be helpful if NYSERDA could also provide a range of quantifiable economic benefits for each potential proposed activity within Disadvantaged Communities. It is also worth noting that the deadline for comment on the Draft Disadvantaged Communities Criteria has been extended to August 5, 2022, which may further delay the date at which the final criteria is published. Since the latest version of the criteria results in expanded definitions for Disadvantaged Communities, Proposers would be able to commit to increased Disadvantaged Community Benefits. One option would be for NYSERDA to allow benefits in the current provisional definition of Disadvantaged Communities and in the final definition (to the extent they are different), so that if a developer is investing in a project or initiative in an area that will not be included in the final definition, they will not be penalized or lose that planning time.

#### 2.14. U.S. Iron and Steel (Buy-American)

Public Service Law (PSL) § 66-r requires NYSERDA to conduct an assessment regarding the Buy-America provisions to be included in a particular CES solicitation and an assessment as to whether the requirement is in the public interest, and then include the results of this assessment in each RFP. For the 2022 RFP, NYSERDA determined that requiring all structural iron or steel to be sourced domestically would not be in the public interest, as it may result in unreasonable increased costs and schedule delay.<sup>6</sup> Despite these findings, NYSERDA is proposing the establishment of a minimum dollar requirement related to the use of U.S. iron and steel in the construction of renewable energy systems selling RECs to NYSERDA; specifically, a minimum dollar requirement for utility-scale solar of \$30,000 / MWdc and a minimum dollar requirement for onshore wind of \$63,000 / MWac. The RFI the poses the following questions on this topic:

- What feedback do stakeholders have on the content of the Advisian study? Does Advisian’s analysis accurately capture key considerations? What specific modifications are warranted and why?
- What other considerations should NYSERDA account for when setting the final domestic iron and steel purchasing requirements for Tier 1 technologies in RESRFP22-1?
- What new requirements should NYSERDA make clear related to tracking and reporting domestic iron and steel expenditures to verify that the required amount of domestic steel has been procured for each awarded Bid Facility?
- By what percentage or dollar amount will the proposed minimum purchase requirement increase the Index REC Strike Price proposed to NYSERDA?
- By what percentage or dollar amount will the proposed minimum purchase requirement increase the project’s Capital Expenditure?

First, bidders currently have a strong incentive to buy supply chain materials, services, and equipment in New York by virtue of the evaluation criteria related to in-state economic development. This makes sense, because in-state ratepayers are supporting this program, and companies should be incentivized to use in-State labor and supplies. On the other hand, if in-state supply chain is not possible, not available, or not affordable, a developer should not be required to use it, as this simply makes projects unfeasible, or at the very least, much more expensive to build.

The Study done by Advisian, in Appendix 3 of the RFI, found that it would not be feasible for project developers to procure major project proponents in-state or in the U.S., and yet NYSEDA then proceeded to propose a Buy American requirement, beyond what is required by the law in NY and despite the findings of its contracted assessment. Simply put, this is going to make projects significantly more expensive for New Yorkers without any benefits for New Yorkers.

We also note that the wind turbine sizes used in the Advisian study are too small and do not reflect what is typically now being proposed in New York. Because of this, the analysis for wind power is not at all accurate. The result is that rebar foundations, which are more available domestically than other components, could not be used to fulfill the proposed requirement. Mandatory domestic sourcing of the turbines will greatly increase costs, and the proposed dollar amount is not feasible but is a de facto requirement to buy American wind turbines.

In this case, given the long list of other changes that are being made to the solicitation this year – nearly all which will increase costs in one way or another -- as well as the extreme difficulties existing worldwide in the renewable energy supply chain, inflation, and interest rates, we strongly urge NYSEDA to follow the letter of the law in New York, and not require Buy American in this RFP, but still continue to strongly incentivize it through the evaluation criteria and reevaluate this question for the 2023 RFP.

If NYSEDA does decide to continue with its Buy American proposal as proposed, there appear to be quite a few questions and issues that will need to be determined in order for developers to fully assess the proposal and to provide a complete response. There have been various local content requirements in other jurisdictions in recent years, and our members have found that these requirements may seem simple at first blush, but quickly get complex. Below are a few preliminary questions, but given the complexity of this topic, the large number of questions which arose upon an initial review of the materials, and the limited time members have had to respond to the other portions of this wide ranging RFI, we do not feel that we have fully digested the Advisian materials to be able to provide a complete reply. Lastly, given the lack of a full understanding of the proposal (as evidenced by the questions below), we are not able to fully comment on the numbers provided in the Advisian report, or the values that NYSEDA has proposed. **We have the following 12 clarifying questions:**

1. Do the minimum \$/MW figures represent the value of the American steel included in the product being purchased, or the value of the product containing American steel? For example, if a developer purchases a single axis tracking system containing torque tubes and racking bars that were manufactured in the US, does the cost of the entire tracking system count towards the \$/MW figure, or just the cost of the torque tube and racking bars used in the tracker? Which approach did Advisian adopt in their report?
2. If the minimum \$/MW figure represents only the value of the American steel included in the product being purchased, how is the value of the steel determined? Are developers entitled to include a margin that the manufacturers (and potentially their subcontractors) incurred in providing the steel products? Do transportation and handling charges count towards the minimum figure? What if the steel product being purchased contains some amount of non-American structural steel (*e.g.*, because that component is not currently and is not expected to be produced in the US - see tower flange questions below)?
3. If the minimum \$/MW figure represents the value of the product containing American steel:
  - a. How much of the steel must be manufactured in the United States before the product qualifies?
  - b. Are developers able to avail themselves of the PSL S66-r provisions which states that the structural steel or iron to be "used or supplied in the performance of the contract ... be made in whole or substantial part in the United States"?
  - c. Does "substantial part" refer to the amount of steel (*e.g.*, a substantial part of the steel must have been made in the US), or the manufacturing process (*e.g.*, a substantial part of the manufacturing

process occurred in the US)? Is NYSERDA able to provide guidance as to when the "substantial part" test might be met?

- d. Since developers may not buy the product directly from their manufacturer (e.g., towers are typically bought from the wind turbine vendor as a package with the rest of the wind turbine) how will NYSERDA assess the value of the product? Will the OEM's margin be eligible for the minimum \$/MW?

4. The following questions relate specifically to tower flanges, but they are examples of some of the difficulties in assessing manufactured structural steel products and the issues implied by the tower flange example may extend to other products:

- a. Are tower flanges "structural steel" (e.g., are they "other similar structural elements permanently affixed to the tower")?
- b. If tower flanges are not "structural steel", why are they included in Advisian's calculation of the minimum \$/MW?
- c. If tower flanges are "structural steel", are they part of the tower or are they a separate component?
- d. If tower flanges are structural steel and are separate from the tower (as Advisian seems to have assumed):
  - i. Can NYSERDA provide guidance to developers to determine which portion of the purchase price due to the tower manufacturer is attributable to the tower and what portion is attributable to the flange? This allocation appears difficult since a typical tower manufacturing process welds in the flanges on each tower segment as an integral part of the product before coatings are applied and the tower is finished.
  - ii. Why are tower flanges given any weight in Advisian's minimum \$/MW calculation if they are not manufactured or expected to be manufactured in the US?
  - iii. Where did Advisian get its costing numbers for the towers given that flanges are typically included in the cost of a tower and the flanges? Did Advisian remove the cost of the flanges from their Tower cost estimation?
- e. If tower flanges are "structural steel" and are part of the tower:
  - i. Will any portion of the tower be considered towards the minimum \$/MW requirements since the flanges will not be produced or made in the United States and therefore not all of the of the manufacturing for the "structural steel product" will have taken place in the United States?
  - ii. If a tower that contains non-US flanges is counted towards the minimum \$/MW requirement, how much of the tower value is eligible?

5. Does US produced steel that is incorporated into products outside of the US count towards the minimum \$/MW figure (e.g., US steel plate incorporated into towers or US steel formed into pier/anchors)? Even if the final coating and painting of the product is completed outside of the US?

6. Are projects that do not use any structural steel or iron exempted from the minimum dollar requirement?

7. Are projects that fully comply with the buy American provisions for all of its structural steel or iron but are less than the \$/MW figure still subject to minimum dollar requirement?

8. Why is there a "Nuts, Bolts, Fasteners" category in the Advisian report when these items appear to be excluded from NYSERDA's determination of what constitutes "structural iron and steel"?

9. Why is there an "internal components" category in the Advisian report (that include platforms stairways, ladders, doors, railings and cable trays), which do not appear to constitute structural elements, and therefore do not appear to be included in NYSREDA's determination of what constitutes "structural iron and steel"?
10. Will NYSREDA cooperate with lenders and tax equity providers to help provide determinations that these capital providers can rely on that a developer's buy American covenants have been fulfilled?
11. Has NYSERDA determined what the consequence will be for non-compliance with the buy-American provisions? For example, will this be a breach of contract/event of default, or will there be damages payable?
12. Advisian has addressed some of the increases in direct costs in buying American steel. Has Advisian made any estimate as to what they expect some of the indirect costs might be (e.g., tracking, documentation, auditing, tax equity and lender underwriting costs, etc.)?

### 2.15. MWBE and SDVOB Firms

Labor Law § 224-d (6) imposes a new requirement regarding the use of Minority and Women Owned Business Enterprises (MWBE) and Service-Disabled Veteran-Owned Business (SDVOB) firms as contractors and sub-contractors on NYSERDA awarded Tier 1 renewable energy projects. NYSERDA is proposing that bidders must indicate any incremental economic benefit commitments that are planned for MWBE and SDVOB firms as a subset of the Expected Total Dollars, which will be given greater weight in scoring. On this topic, the RFI inquires:

- What other considerations, if any, should be afforded to Bid Proposals that commit to incremental economic benefits to MWBE/SDVOB firms?

ACE NY believes that current consideration in which economic value directed towards MWBE and SDVOB firms is given greater weight in scoring as a separate category of economic benefit, appropriately incentivizes the intent to encourage, support, and maximize MWBE and SDVOB firms as contractors and sub-contractors on NYSERDA awarded Tier 1 projects. Additional consideration should be warranted to credit bids whose sponsors (*i.e.*, the bidding entity itself) qualifies as MWBE and SDVOB firms, as it is unclear whether any preference is afforded in this scenario currently. We further note that ACE NY members report, in their experience, that it has been extremely difficult historically for firms to obtain these certifications. The supply of MWBE and SDVOB firms is less than demand in the public works arena, prior to the inclusion or pursuit of renewable energy companies.

- What other reporting requirements should be expanded in response to the new MWBE/SDVOB contract provisions?

In compliance with Section 224-d (7b), projects should provide data on not only the utilization of MWBEs but also the employment of minorities and women in project construction related jobs. We believe this should include engineering consultants, environmental consultants, as well as the project sponsors themselves. This will help encourage and support the hiring and staffing of minorities and women into project roles.

- How can NYSERDA encourage awardees and Sellers to utilize MWBE and SDVOB firms as contractors and subcontractors in New York State renewable project development, construction, and operation?

It is truly challenging to find qualified MWBE and SDVOB firms to design, procure and construct large-scale renewable projects in New York State. We would ask NYSERDA to help us expand the opportunity to contract with MWBEs and SDVOBs by recruiting existing MWBEs and SDVOBs into the renewables market and by coordinating training opportunities for these businesses to transition their focus. NYSERDA could develop and maintain a database of MWBEs and SDVOBs that have worked on Tier 1 renewable energy projects or are qualified to work on Tier 1 renewable energy projects as a resource. NYSERDA could also help address the bankability of MWBEs, which tend to be smaller companies with modest balance sheets. Another key issue is the interaction between



the labor agreement requirements and the MWBE/SDVOB requirements. NYSERDA should coordinate with the labor unions so that projects have a pathway to comply with both the MWBE/SDVOB and the Labor Peace Agreement requirements.

- What clarity would help stakeholders better-understand these new requirements?

It would be helpful if NYSERDA would clarify to whom these MWBE/SDVOB requirements apply. The RFI language targets economic benefit commitments that are planned to be directed to MWBE and SDVOB firms as contractors and subcontractors of a proposed project. Labor Law 224-d (6), however, requires compliance with Article 15-a of the executive law, which defines “contractor” as any “individual, a business enterprise...or any other party to a state contract, or a bidder in conjunction with the award of a state contract or a proposed party to a state contract.” Could NYSERDA clarify whether the project sponsor would also be evaluated for MWBE and SDVOB participation? We believe project sponsors should be included. Could NYSERDA clarify what are considered construction-related jobs as described in Labor Law 224-d(7)? As this is “construction-related” jobs and not simply construction jobs, does it include project sponsors, consultants, engineers, contractors, and subcontractors for the purposes of MWBE requirements?

## **2.16. Project Viability and Operational Flexibility and Peak Coincidence Evaluation**

As summarized in the RFI, the “Project Viability and Operational Flexibility and Peak Coincidence” portion of a bid evaluation allows for bids to receive up to 20 points for ten non-price topics: 1) Site Control, 2) Interconnection, 3) Energy Deliverability, 4) Peak Coincidence, 5) Permitting, 6) Project Development, Financing and Creditworthiness, 7) Community Engagement, 8) Resource Assessment and Energy Production Estimate, 9) Carbon Emissions and Embodied Carbon, and 10) Energy Storage. Section 2.16 of the RFI explained some planned changes to this portion of the evaluation process.

Prior to commenting on the specific proposed adjustments below, ACE NY would like to comment on the Project Viability and Operational Flexibility and Peak Coincidence section overall, to suggest that having ten different topics covered with 20 points has most likely created a work-intensive evaluation process for NYSERDA and a lengthy checklist for project developers but has likely rendered any of the individual categories relatively meaningless. That is, it is unlikely that any of these topics are determinative in project selection because each is individually worth so few points. [Clearly, ACE is not privy to the project evaluation discussions and process, and it could be that our assumption that these categories are no longer meaningfully influencing project selection is inaccurate, but it’s an educated guess.] Further, as the minimum threshold criteria become more stringent as proposed elsewhere in the RFI -- which ACE NY generally supports -- having evaluation criteria related to that same issue becomes less important.

If, for example, the site control criteria is strengthened, and every eligible bidder meets those criteria, is it necessary to also award points for site control? And if the main way to ensure peak coincidence is to integrate storage into a project, is it necessary to award points for both peak coincidence and energy storage? As a third example, if a further point in the interconnection process becomes a minimum threshold requirement (although ACE is not, at this time, supporting SRIS completion as an appropriate minimum threshold), is it necessary to award points for interconnection? Further, projects developers are highly motivated to avoid prime soils by both the scorecard process and the financial penalty for siting on prime soils; NYSERDA may want to explore if points in this category are a further motivation. Finally, by requiring minimum community engagement steps and actions, it no longer becomes necessary to award points for those actions, which every developer should be doing in any case. By limiting the topics covered by this category, each then becomes more important and impactful, and this category could get re-focused on project viability to reduce and limit project attrition. This would strengthen the

overall procurement program and ensure that more awarded projects reach successful completion in a timely manner.

With all that in mind, ACE NY would respectfully request that points in Project Viability and Operational Flexibility and Peak Coincidence Evaluation be awarded in just four or five categories: 1) Energy Deliverability, 2) Project Development, Financing and Creditworthiness, 3) Energy Storage, and (4) Peak Coincidence/Technology Diversity, with the possible addition of avoidance of prime soils if NYSERDA finds that the mitigation penalty fee is not adequately steering project developers away from prime soils.

#### **2.16.1. New Sub-Category: Agricultural Land**

As explained in the RFI, proposed facilities will be evaluated based on their “expected impacts to active agricultural land and Mineral Soil Groups 1 through 4 (MSG 1-4), as well as any avoidance, mitigation, and/or co-utilization measures that the Proposer is willing to commit to at the time of the bid submission.”

Our understanding is that NYSERDA will require all solar proposers to complete the NYSERDA Smart Solar Siting Scorecard but will not use the Scorecard to preclude awards nor contractually require measures submitted via the Scorecard. NYSERDA will make the scorecard results public and share with permitting agencies. Proposals with co-utilization commitments will receive favorable scoring credit and these commitments *will* be included in the awarded contract. NYSERDA will, in the 2022 RFP, allow for deferral of the Agricultural Mitigation Payment until three-years after operation if the project implements agricultural co-utilization measures specified in the contract.

While projects are already incentivized to avoid prime soils by virtue of the Agricultural Mitigation Payment, ACE NY generally supports this approach. Waiving the Agricultural Mitigation Payment and including enforceable measures in the contract will obviously be a strong motivation for project owners to deliver on the agricultural co-utilization measures they propose. While we note that the waived payments most likely will still be required to be carried in a project’s budget (and thus will increase costs), we support this approach as a way to aggressively incentivize co-utilization. ACE NY firmly believes that solar development and a thriving agricultural sector can successfully co-exist in New York. And while every solar project may not be appropriate for co-utilization and every farmer may not be interested in hosting solar, encouraging co-utilization in the 2022 RFP can be an important method to get demonstration projects underway and increase the learning about how solar and farms can work together. One possibility is for NYSERDA to see if the 2022 RFP results in a further reduction in the overlap of projects with prime soils, as occurred in the 2021 RFP, before awarding points for this project characteristic in this RFP. We are suggesting this not because avoiding prime soils shouldn’t be incentivized, but because limiting the sub-categories in non-price evaluation will make the remaining categories more impactful.

As an added matter, ACE NY supports Agricultural Mitigation Payments being directed to beneficial projects in the local area around the proposed renewable energy project.

#### **2.16.2. - Revised Evaluation for the Permitting Sub-Category**

In Section 2.16.2, NYSERDA proposes to coordinate with the New York State Department of Environmental Conservation (DEC) to evaluate bids “with a more favorable pathway to securing all necessary permits” to be scored more favorably compared to proposals that have “more material challenges that have not yet been addressed with planning mitigation measures.” It is unclear what NYSERDA is seeking to accomplish by this, particularly given DEC’s focus on natural resource issues when these projects have a range of complex, and sometimes competing, benefits and impacts that go beyond the focus of one agency. There can be multiple non-biological resource considerations associated with development of renewable energy projects, including land use,

cultural, human environment, agricultural and others. DEC's involvement would focus the attention to natural resource issues, potentially to the detriment of other important factors. In our view, DEC has long focused on narrow natural resource issues in the permitting process and ignored the clean air and climate action benefits of renewable energy development. At a minimum, even if DEC were to evaluate bids within its agency's focus or charge, it should do so with an emphasis on the CLCPA and critical need for renewable energy projects to be built in the State. If DEC would evaluate mitigation options, cost and impacts in a balancing as compared with the mandates of the CLCPA and provide input outside of the tunnel vision of an individual Regional, Divisional or Bureau priority, then perhaps it could be useful to have an early view of resource impacts and possible mitigation measures, but only if the information is shared with the proposer/developer prior to bid selection, so that the proposer could respond. As a general rule, the permitting process results in an evolution of a project to minimize and mitigate impacts, and the outcome of that process will not be known at the time a DEC specialist provides input to NYSERDA.

However, if the intent is simply to have DEC opine on a project potential impacts and mitigation, ACE NY does not believe reliance on or use of this approach in the evaluation of bids, as proposed in 2.16.2, would be productive. First, the language and terminology used in the criteria described in 2.16.2 are ambiguous and unclear. With respect to the use of the term "material challenges", ACE NY has some concerns due to the fact that "material challenges" aren't clearly identified. Often "material challenges" are not identified by state agencies or stakeholders until late in the permitting process. This would make NYSERDA's proposed coordination with DEC on this matter futile or illusory. The term "feasible pathway" is also not clearly defined. Often, permitting entities (*i.e.* Siting Board/ORES/local permitting authorities) and NYSDEC do not agree on what is considered a "feasible pathway" for a project.

Second, comparing bids "with a more favorable pathway to securing all necessary permits" with proposals that have "more material challenges that have not yet been addressed with planning mitigation measures" may be of little use, as bids are typically submitted too early for a project to have identified all potential resource issues requiring mitigation (*i.e.*, prior to 94-C application submittal). Third, engaging and coordinating with DEC in the evaluation of bids using this criterion may pose challenges. In our experience, at early stages in the process, DEC has not been able to provide meaningful feedback or opinions on "material challenges." And even in the instances when DEC has provided meaningful feedback and/or opinions on "material challenges" at early stages in the process, DEC frequently changes its position with respect to the identified impacts (or lack thereof) or identifies additional issues later on in the process. Furthermore, Large Scale Renewable project developers already seek the advice on the review of critical issues from a range of technical consultants and legal experts, who prepare materials covering this topic for NYSERDA's review. It would be more efficient if NYSERDA could review these materials internally, rather than seek advice from DEC on how to conduct an evaluation of bids based on the information provided by project developers. Engaging and coordinating with DEC in the evaluation of bids also raises another concern. DEC is not the agency delegated with the authority to grant any of the permits required for Large Scale Renewable projects. As such, it would be inappropriate for DEC to provide input on challenges since they are not engaged conducting the balancing test required of ORES under the 94-c statute.

The evaluation criterion identified in 2.16.2 is also not clear on how this evaluation approach would factor into or affect scoring. Based on the proposed approach, depending on what type of permitting challenges are posed, it is unclear how certain projects would be ranked. Additionally, it is unclear how mitigation measures would be evaluated. Many of the resource impacts do not have specific mitigation requirements. This leaves a question as to how DEC would score a project if it did not like or agree with a particular mitigation approach.

Finally, a general concern regarding this evaluation approach is that it essentially dictates or requires full project resource assessment to enable identification of reasonable proposals for mitigation. This is contrary to the typical

development cycle for Large Scale Renewable projects, where full application preparation (and the significant costs associated with it) does not occur until after an award is issued.

### **2.16.3. Revised Evaluation for the Peak Coincidence Sub-Category**

For RESRFP22-1, NYSERDA intends to evaluate projects based on their marginal contribution to future load forecasts (e.g., 2030, 2040) when accounting for the portfolio of already operating and contracted, under development renewable and zero-emissions generation in New York State. Projects that complement the existing portfolio of operating/under development projects more significantly will receive greater scoring compared to projects that do not afford the same level of complementary generation compared to future load.

ACE NY supports this approach, and believes it is appropriate for NYSERDA to consider future (2030, 2040) rather than current load forecasts, given the dynamic nature of New York's electricity landscape and the changes projected by the economy-wide efforts to comply with the CLCPA. Peak load will likely shift due to a number of factors, including electrification of transportation and building heating. We also note, however, that due to the complexity in accurately predicting 2030 and 2040 peak load forecasts and generation profiles in specific areas, NYSERDA could consider using technology diversity as a proxy for this sub-category (especially since deliverability is being enhanced as a threshold requirement as described in 2.8.3).

### **2.16.4.- Revised Evaluation for the Energy Storage Sub-Category**

For RESRFP22-1, NYSERDA intends to afford greater weighting to projects that include storage. The RFI states, "Evaluation will be modified to reflect the current costs of energy storage facilities and are intended to more extensively examine the benefits afforded by energy storage facilities to transmission-constrained areas of the state's electric grid."

ACE NY agrees that Tier 1 of the Clean Energy Standard should continue to support energy storage deployment and preferentially evaluate projects that include storage. We suggest that if evaluation points are going to be awarded specifically for storage in particular transmission-constrained locations on the grid, it would make sense to tell potential bidders where those locations are in the RFP, rather than having bidders guess what NYSERDA prefers. On the other hand, we want to caution that if an area is transmission constrained, a 20-50 MW storage project is probably not going to fix it, and a larger storage project, e.g., a 100 MW project, won't be feasible for a winning bid price. A storage operator will operate to maximize revenues but will not operate uneconomically to fix transmission constraints. For this reason, we caution against awarding too many points for storage based on its location in transmission-constrained areas.

We also note that New York also needs a procurement program to support standalone storage to achieve the 6 GW storage goal, though ACE NY will provide input on that need in a separate forum or filing.

2.16 questions in the RFI:

- Are these updates to Bid Proposal evaluation reasonable and sufficiently described for Proposers to be able to adequately respond to the updated evaluation mechanics?

ACE NY does not support the permitting sub-category and in fact believes it should be removed. This question is also addressed in the responses above.

- Are there additional factors that NYSERDA should consider as part of the Project Viability evaluation?

As described above, ACE respectfully suggests that to make the 20 points in this section more impactful, NYSERDA should consider limiting it to 4 or 5 sub-categories as outlined above.

- Should NYSERDA consider removing any factors from the Project Viability evaluation?

Yes, as described above, we suggest removing 1) Site Control, 2) Interconnection, 5) Permitting, 7) Community Engagement, 8) Resource Assessment and Energy Production Estimate, and 9) Carbon Emissions and Embodied Carbon from the Project Viability and Operational Flexibility and Peak Coincidence Evaluation to create a stronger focus on project viability.

- Would the above-mentioned modifications to the Agricultural Mitigation Payment framework help encourage co-utilization or agrivoltaics projects?

As described above, we are not sure it will be meaningfully additional to the incentive already provided by the Agricultural Mitigation Payment and making the Solar Scorecard public.

- What sensitivities or challenges are presented by introducing agricultural impacts as non-price category for evaluation?

One challenge is that the remaining sub-categories become less impactful. The other is it may not be meaningfully additional to the incentives already provided.

## 2.17. Non-Viability Determinations

Under its 2021 solicitation, NYSERDA introduced the Non-Viability Determination, which authorized NYSERDA to reject a bid based upon a unanimous determination by the Technical Evaluation Panel (TEP) if the project is not presently viable due to project immaturity, unrealistic economic or regulatory assumptions, or serious economic or regulatory risks. In this RFI, NYSERDA indicates its intention to expand this determination to include serious permitting/regulatory risks not mitigated based on the current proposed design, and unrealistic regulatory assumptions, both of which would be informed by “permitting Specialist Reviewers.” NYSERDA would still scrutinize submitted proposals to confirm a viable bid price, and “reserves the right to ask clarifying questions to confirm that the Bid Proposal is not predicated on unrealistic economic assumptions or subject to serious economic risks”. The Non-Viability Determinations would not be made until after a proposer “has been provided the ability to respond to any serious concerns raised by the TEP, in addition to any clarifying questions asked by NYSERDA.” On this topic, the RFI inquires:

- What other factors should NYSERDA consider when implementing updated Non-Viability Determination reasons?

ACE NY supports NYSERDA’s rare and judicious use of a non-viability determination. But, as detailed in Section 2.16.3, we do not support the proposed changes to evaluation of permitting, and do not believe it is appropriate to pre-suppose the outcome of the permitting process and how a project can (or cannot) be modified throughout the permitting process. Thus, we do not support use of the “Permitting Specialist Reviewers” in a non-viability determination.

Further, from the perspective of a potential bidder, the communication of clear, objective, and transparent minimum viability requirements/thresholds prior to parties bidding in the solicitation is much preferable to a subjective and less-transparent non-viability determination. As explained above, ACE would support changes to the 20 non-price points to strengthen the focus on project viability.

Some ACE NY members suggested that another factor that NYSEDA may want to consider in the non-viability determination is whether the proposed project will materially affect one or more other proposed projects that also have NYSEDA contracts in terms of physical or economic curtailment. There was some different opinions on this question, with some ACE members raising that NYSEDA already took this approach in 2021, and other raising that since this is addressed in the RFI in 2.8.3 as an enhanced minimum threshold, it would not need to be considered in a non-viability determination.

On the question of how transmission constraints were considered in the non-viability determination, ACE members expressed concern that the consultation with NYISO was a “black box” and developers need to know how exactly the determinations would be made by NYISO and NYSEDA and whether there was consistency in how that was approached.

- In addition to interconnection cost estimates, what other cost estimate subcategories (e.g., total capital costs, labor costs, operating expenses, federal tax credit assumptions) should NYSEDA solicit from Proposers in order to adequately assess if a Bid Proposal is predicated on unreasonable economic assumptions or subject to serious economic risks

In assessing whether a bidder’s economic assumptions are unreasonable, NYSEDA may want to consider the Federal Investment Tax Credit status and questions; total capital expenditures, especially for an engineering, procurement, and construction (EPC) contractor; assumptions about solar module prices and whether panels have been procured, as well as the certainty of a developer’s path to procuring panels at the pricing assumed.

- What is the ideal, feasible, and minimum rate of return (ROR) needed to ensure a project moves through financing, construction, and operation in New York State? See the most recent NYISO State of the Market Report for recent public data regarding feasible rates of return for large-scale renewables projects. How does this compare to the returns seen in other jurisdictions?

The specific question on ROR is best answered by individual companies and not by ACE NY. Further, the question regarding ROR in other jurisdictions is not an apples-to-apples comparison because the Index REC structure, contract tenor, and creditworthiness of NYSEDA significantly improve financing opportunities for projects that are awarded contracts in New York vs. projects in some other regions. However, the Index REC structure also introduces significant basis/shaping (generation profile) and capacity price risk that is not part of traditional utility power purchase agreements (PPAs). Additionally, the lack of any utility-scale builds in NY for solar have created a great deal of uncertainty around EPC pricing. This lack of transparency creates additional risks to project developers. This combination of factors significantly complicates comparing RORs in different jurisdictions to New York.

- What are some key metrics, relative values, or other indicators that indicate a project is economically viable and can be advanced through financing, construction, and commercial operation? Conversely what key metrics, relative values, or other indicators that indicate a project is unlikely to reach commercial operation?

This question is best answered by individual companies.

- What, if any, additional controls should NYSEDA implement to ensure that Proposers have the ability to adequately respond to clarifying questions and/or concerns raised by the TEP or Specialist Reviewers prior to issuing a Non-Viability Determination?

From the perspective of a potential bidder, the communication of clear, objective, and transparent minimum viability requirements/thresholds prior to parties bidding in the solicitation is much preferable to a subjective and less-transparent non-viability determination. With that said, ACE NY suggests that questions posed to bidders in the non-viability determination process should allow adequate time for responses, particularly if third party support is needed in responding. We suggest that NYSEDA grant parties a minimum period of 10 business days to respond to questions and/or concerns raised by the TEP.

- How should NYSERDA assess risk with respect to proposed Bid Facilities that are intended to be sold to a long-term owner compared to facilities that are planned to be developed, owned, and operated by the Proposer?

ACE NY is composed of a diverse set of members, each with unique business models that are constantly evolving. While these business models place different emphasis on project development vs project operation, all can be equally effective at producing viable projects and contributing to a robust, competitive response to a NYSERDA solicitation. To a large degree, the risks that impact the viability of a project do not relate to long-term ownership, but rather the other aspects previously discussed in these Comments surrounding the development of each unique project (*e.g.*, deliverability, permitting, energy production, local support, etc.). Secondly, while some ACE members, but certainly not all, may believe that NYSERDA contracting with the long-term owner may be less risky, long-term ownership for any project is unknown and would result in NYSERDA needing to speculate about each project. While many entities might intend to own and operate a given facility during the solicitation, these are intentions and not binding business decisions. Finally, it should be noted that the first and only bid facilities awards to advance into construction and operations to date, have been developed by stand-alone developers and financed by third-party owner-operators. For these reasons, we do not recommend that NYSERDA assess risk differently based on long-term ownership intentions at the time of solicitation.

- What other data should NYSERDA request from Proposers to verify the technical viability of the Step Two Bid Proposals?

ACE NY does not have any additional data to suggest as necessary for this purpose.

## 2.18. Optional Elective Committed Local Transmission Upgrade Bid Proposals

Under RESRFP22-1, NYSERDA is considering allowing proposers to submit an alternate bid that includes local elective electrical infrastructure upgrades (elective upgrades). These elective upgrades would enable the proposed facility to deliver a greater amount of its generated energy, and, would have to be committed to as part of the alternate bid proposal, and would be codified and required to be built in any resulting awarded contract. Proposers electing to submit an alternate bid with these elective upgrades would only be permitted to if the upgrade costs are confirmed by an approved study by the relevant interconnecting utility. The indication of interest of exercising this option would be a part of the Step One Eligibility Application so that if the project is deemed eligible to proceed to Step Two, NYSERDA can indicate what data requirements need to be submitted in Step Two. On this topic, the RFI posed the following questions:

- Please comment on your interest in developing an alternate Elective Upgrade bid proposal should the option be afforded to Proposers under RESRFP22-1.
- What other requirements and details should NYSERDA provide in RESRFP22-1 to inform Proposers as to the scope of requirements necessary to submit with upgrades?
- Should NYSERDA require a less advanced study stage prior to accepting Elective Committed Local Transmission Upgrade Bid Proposals (*e.g.*, prior to a completed Facilities Study)?

ACE NY members respond that although they are not opposed to this option, a very minimal number of projects would likely be able to exercise this option this year, because the project would be required to have completed their Facility Study in the interconnection process, *i.e.*, they would have to have completed a Class Year, and the projects that have completed the Class Year generally already have a NYSERDA contract. There does not seem to be a downside to including this option in the 2022 RFP and including this optional approach in a future RFP would be positive and could bear fruit.

## 2.19. RESRFP22-1 Headroom Data Appendix

As described in the RFI, in February 2022, NY's utilities filed headroom calculations required by the Commission in Case 20-E-0197. These calculations were meant to provide updated headroom estimates for each utilities' local transmission and distribution system to inform stakeholders of existing system limitations. As described in the RFI, in RESRFP22-1, NYSERDA intends to publish data to augment these calculations; list the remaining headroom as reported for each utility district; and provide the amount of capacity contracted by NYSERDA in each utility district to guide proposers in assessing the viability of their proposed projects. Also, further requirements regarding headroom availability are described in Section 2.6.3, Energy Deliverability. The RFI inquires:

- What other data would be useful for Proposers in developing their Bid Proposals that NYSERDA could include in the new Headroom Data Appendix? How can this data be made most accessible and actionable for Proposers? What other considerations should NYSERDA account for when developing both the final Headroom Data Appendix and final requirements for Proposers that may need to provide a deliverability study if sited in an area with potentially insufficient headroom to be fully deliverable?

ACE members report that it would be helpful to know what specific projects are included in the headroom data; if any awarded projects have been cancelled in that location; and how each project's cancellation would affect the headroom. We suggest that NYSERDA include this data as a link in the RFP and include the ability to submit questions from proposers around the headroom report, inputs, and outputs. Developers should be given the opportunity to offer additional information specific to their projects that could assist in the headroom analysis.

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