July 1, 2024

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

Dear Ms. Morrell,

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

In summary:

- The Department agrees with the OSC Draft Report’s findings that there are many factors outside of the government’s control that put the achievement of the CLCPA’s renewable energy goals at risk. The OSC Draft Audit Report provides a valuable service in identifying some of these risks to help the public better understand the factors that may lead to achievement of CLCPA goals to transform New York’s energy system falling marginally behind schedule, despite the comprehensive actions and concrete progress detailed in this response. The Department is taking prudent steps to reduce these risks, as outlined below, but there are factors that the Department simply cannot control that are acknowledged by the OSC’s Draft Report – such as increased severe weather events and technological limitations to maintain reliability during such events, global supply chain disruptions, inflationary pressures, and other market forces – and that affect CLCPA implementation.

- The Department disagrees with the statement in OSC’s Draft Report that PSC uses outdated data and incorrect calculations for planning purposes. As described in detail below, the PSC has ongoing planning processes that rely on regularly updated forecasts using best available data. OSC’s conclusions are in some cases based on misinterpretations of data. For example, OSC misinterpreted a spreadsheet that included calculations for attrition rate to conclude the PSC used incorrect calculations for planning purposes, despite the fact that the Department provided documentary evidence and further explanation to the OSC showing that they were mistaken.

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

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

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

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

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

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

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

As noted in the report on page 11, we stated that their plans did not include all essential components. PSC is using outdated data for planning purposes and has not adequately addressed all current and emerging issues, such as increased push to transition to electric vehicles and the switch to use of electric for all residential
heating and cooling, which will likely increase electricity demand significantly. Further, PSC did not correctly take into consideration the historical cancellation rate for renewable energy contracts (between 2005 and 2023, an average of 12% of contracted large-scale renewable projects were canceled) when projecting electricity generation estimates, increasing the risk that decision-makers are not using the most accurate information to support the achievement of program goals. When we asked PSC officials what they were currently doing to assess issues that could affect Climate Act goals, they noted that they are not required to issue a formal assessment until July 2024 and did not provide any documentation to show that they have begun assessing the State's transition to renewable energy or potential obstacles to achieving goals. During the audit, we asked repeatedly for calculations of the costs and projected load demand figures. PSC officials did not provide this information and stated they did not have to update this information until their legislatively mandated July 2024 comprehensive review. While PSC did provide this report to the auditors in January 2024 in response to our preliminary report, officials were unable to show the actual calculations and support of what information was used to determine that New York would achieve 66% of the State’s projected 2030 electricity load through renewable sources. Throughout our audit, PSC officials noted that they were behind in reaching the 2030 goal yet did not know how far behind they were. However, in July 2024, PSC announced it was 3 years behind in reaching that goal. This indicates either a lack of transparency or that the process to measure progress needs improvement or potentially both.

Response to OSC Key Findings

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

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

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

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

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

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

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

- Consistent with recommendations from the Power Grid Study, the Commission has established a new transmission planning process, the Coordinated Grid Planning Process (CGPP), which involves long-term projections for transmission needs at the bulk, local transmission, and distribution levels. This planning process is underway and utilizes the best available data sets, including a detailed supply curve of all available large-scale renewable resources in New York State, utility headroom data on available grid capacity for interconnection of new resources, and granular cost and generation profiles for each zero-carbon resource. The CGPP utilizes sequences of increasingly localized modeling frameworks, within industry-standard software tools, to determine the optimal mix of renewable resource and transmission and distribution infrastructure needed to meet our 2030 and 2040 electricity system goals. The process will be repeated on a regular cycle, and all data inputs will be updated for each cycle, addressing the need for proactive planning on an ongoing basis.

- The Department leverages current data as part of its electric system planning processes. For example, as part of the CGPP initiated by the Commission under Case 20-E-0197 on August 17, 2023, the New York State Utilities and Long Island Power Authority (LIPA) will develop detailed short circuit and power flow models using the New York Independent System Operator’s (NYISO’s) most recent Federal Energy Regulatory Commission (FERC) Form 715 database of system models and auxiliary files and the NYISO Load and Capacity Data (referred to as the Gold Book) as part of this long-term transmission planning framework to achieve the goals of the CLCPA.
The Commission relies on planning studies conducted annually and quarterly by the NYISO to track emerging reliability concerns. The NYISO utilizes the most current data available for these studies derived from their operation of the State’s energy system. The most recent NYISO Comprehensive Reliability Plan, which sets forth a plan for the bulk power system over a 10-year horizon, was released in November 2023 and will be used for subsequent planning studies until the release of the next study in 2025.

The Commission initiated a Proceeding to assess implementation and compliance with the requirements and goals of the CLCPA under Case 22-M-0149 on May 12, 2022 to track and assess the advancements made toward meeting the requirements and goals of the CLCPA, and to provide policy guidance, as necessary, for additional actions needed to fulfill the objectives of the CLCPA. The First CLCPA Report issued on July 20, 2023, and associated presentation before the Commission included both an historic look back at the cost and benefits to transition to renewable energy sources, as well as future projections of the same. The next CLCPA report will be issued in 2024.

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

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

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

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

State Comptroller’s Comment – While no projects have been officially canceled, as noted in the report on page 15, two projects resubmitted bids under the 2023 solicitation for offshore wind projects and were provisionally awarded contracts. The amount of energy they proposed to provide (between 1.65 GW and 1.82 GW) was the same, but the price increased over 30% and the projects’ operational dates were pushed back from 2024 to 2026. Additionally, as of April 2024, it was announced that three other offshore wind projects totaling over 4 GW of capacity that were provisionally awarded under the 2022 solicitation could not reach a final agreement.
and will not be entering into a contract. A large portion of New York City’s renewable energy is expected to come from offshore wind, so similar issues could dramatically affect the achievement of Climate Act goals.

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

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

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

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

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

**State Comptroller’s Comment** – While PSC might have developed cost estimates for individual programs, it has not developed an overall cost-benefit analysis or cost estimates,
which are necessary to make executive decisions on the overall goals it is trying to achieve with
the CLCPA and the impact those costs will have on ratepayers. In addition, PSC did not
reasonably estimate or verify other entities’ estimates of the cost of the transition to renewable
energy.

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

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

- The Department recognizes the magnitude of the investment necessary to effectuate the
provisions of the CLCPA and makes all efforts to minimize the impacts of such on utility
ratepayers.
- An exhaustive review of how Commission policy and decisions address ratepayer concerns
and balance costs and benefits may be beyond the scope of OSC’s effort. For an overview,
we note that the DPS whitepapers and subsequent orders on each clean energy program
that the Commission has adopted consider the estimated costs and benefits of those
initiatives, an established practice that predates the CLCPA. In addition, the First CLCPA
Report and associated presentation before the Commission provide both an historic look at
the cost and benefits of the Commission’s renewable energy programs and projections of
the likely future costs. This report will be updated pursuant to the first biennial
comprehensive report required under PSL § 66-p(3). The report and presentation also
include a summary of programs adopted to date.
It is worth noting here that the federal Inflation Reduction Act (IRA) contains a range of tax credits. The IRA results in lower costs of procurement of renewable energy credits (RECs) and distributed solar, which in turn lowers costs to ratepayers. For instance, the PSC’s order initiating the Zero Emission Credit Requirement to preserve nuclear zero-emission attributes expressly provided that ZEC payments would be adjusted for a change in law - in this case, the IRA production tax credit - that materially changed the economic benefits of the contract. In August 2023, the Governor announced that the IRA tax credits will provide significant financial support to the four operating nuclear reactors in New York, thereby reducing future payments by New York electric ratepayers to these facilities. The Commission has encouraged the entities under its jurisdiction to pursue IRA tax credits whenever possible.

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

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

The Commission has advocated, facilitated and accounted for State and local government initiatives to procure renewable energy to offset the amount of renewable energy that must be contracted by ratepayer-funded procurements. For example, in its April 2022 Order approving Tier 4 projects, the Commission accounted for New York City’s contracted commitment to purchase Tier 4 RECs that resulted in a savings to ratepayers estimated to be between $0.8 to $1.7 billion over the life of the projects. (See Order Approving Contracts for the Purchase of Tier 4 Renewable Energy Certificates, Case 15-E-0302.)

In the same April 2022 Order, the Commission acknowledged how the City’s procurement and a similar commitment by the State Office of General Services can lower ratepayer costs and explicitly called for an “all of government” approach to lessen the ratepayer impacts of achieving the CLCPA goals, noting: “The City of New York is making significant financial commitment to Tier 4 and has provided a model for other branches of State and municipal governments to follow. In this respect, on April 8, 2022, the Office of General Services (OGS) filed a letter of intent in the docket stating that it would also be entering into a contract with NYSERDA for Tier 4 RECs associated with energy used by State agencies and departments located in the City on terms similar to those in the NYC Contract. The Commission sees this “all of government” approach as a significant development that will meaningfully reduce the utility ratepayer impact of implementing the CLCPA, and
strongly encourages other branches of government to make similar commitments under Tier 4 and other CLCPA initiatives, like those made by NYC and OGS.”

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

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

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

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

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

Finding 4: OSC determined that a formal backup plan has not been established in the event
Climate Act goals are found to be unachievable within the prescribed time frames, other than PSC
suspending or modifying the obligations under the Climate Act and relying on the continued use
of fossil fuels to generate electricity until sufficient renewable electric generation is developed.
However, continuing to use fossil fuels as a backup plan would delay emission reductions and
increase the burden on ratepayers by forcing them to continue to support fossil-fuel generation
that otherwise could be retired—including the additional cost of the infrastructure to safely
transport the fossil fuels to where they will be used to generate energy. ” OSC Draft Report Page
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Department Response: We agree that a delay in achieving decarbonization goals means some
fossil energy resources may operate longer than they would if all goals were met on time. The
OSC Draft Report acknowledges that the CLCPA itself prescribes that the backup plan is to
“temporarily suspend or modify obligations after a hearing if it determines the implementation of
the renewable energy program is impeding the provision of safe and reliable electric service,
impairing existing obligations or agreements, or resulting in a significant increase in arrears or
service disconnections.” (OSC Draft Report, Page 8). However, to the extent that OSC believes
that notwithstanding the statute PSC should develop an alternative “formal backup plan,” OSC’s
determination appears to be based on an inaccurate or incomplete understanding of electric system
planning.

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

● The Commission, the NYISO, and the utilities are planning for the achievement of CLCPA
goals. The risk that arises if those plans are inaccurate or if the necessary infrastructure is
not built on time is a risk to reliability. We agree that a “backup plan” is needed to mitigate
that risk but disagree with any suggestion that this must entail a “formal” comprehensive
structure that differs from that created by the legislature. Instead, backups and back stops
already have been built into existing planning processes. The NYISO’s reliability planning,
which is updated quarterly, includes mechanisms for implementing “back stop” solutions
where a reliability deficiency is identified. Thus, as the supply mix changes over time,
alternate plans will be developed as necessary to ensure system reliability standards are
met. For example, while the PSC, the NYISO, and the utilities make plans for energy
resources to change over time, those system reliability planning standards include
requirements to maintain system reliability in the event those plans are affected by
changing demand forecasts or other factors (e.g., NYISO recently exercised a provision in
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DEC’s air regulations to keep online certain peaking power plants to allow more time for the Champlain Hudson Power Express (a Tier 4 resource under the CES) to come online.

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

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

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

**CLCPA Planning and Progress**

**Planning and Assessments**

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

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

We reviewed and discussed the projections with PSC officials, who also agreed that they contained calculation errors—the most notable being the allowance for 0.2% capacity cushion to mitigate the risk of project cancellations instead of the intended 20%. Additionally, DPS provided a
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*PowerPoint presentation on the projections to PSC, but this also contained errors related to the Climate Act goals. PSC already does projections of energy demand every 6 months to help identify peak demand during summer and winter months but does not utilize those projections to update the analysis of projected consumption versus projected supply of renewable energy. Decision-makers need accurate, complete, and current data to make the best decisions; without it, it is less likely that Climate Act goals will be achieved, especially within the currently required time frames.*  
*OSC Draft Report page 12*

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

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

- It is important to note that all long-term planning exercises are based on underlying assumptions and projections for the conditions that the future system will have to support. The longer the term, the more uncertain those assumptions and projections. To account for these uncertainties, energy system planning includes scenario analysis in which different scenarios are defined for the variables that can have the greatest impact on the outcome. For example, we conduct separate analyses based on a high load forecast scenario or a low load forecast scenario.
- It is inaccurate to suggest that the Commission does not consider changes in load. As already noted, the Commission’s October 2020 Order built in a 20 percent generation attrition rate (see page 24 of the order; page 27 of the PDF), which is used to address any increased load beyond what was currently projected for the period. Additionally, NYSERDA has been procuring 20 percent more MWh of new resources than what is projected to be needed for 2030 and beyond. Moreover, projections are regularly updated as part of the on-going biennial review.
- Several processes allow the Commission a close to real-time view of increases in load. The Commission undertakes annual Summer and Winter preparedness evaluations that examine, among other things, the reliability of the existing system to meet projected load. The Commission uses the most current projections for these semi-annual evaluations.
- OSC misunderstands the 0.2% referenced in this finding as well as in several other areas of the OSC Draft Report. Contrary to the draft’s implication, it is not related to the NYSERDA procurement levels. The 0.2% in the spreadsheet provided to the auditors on April 15, 2022, titled “200430cES CLCPA Load-Targets- (Base Case-Pathways) – baseline per 2018 Progress Report excl bio,PV – FINAL (2).xlsx”, located in cell O17, of the spreadsheet tab titled “Summary Worksheet”, is the assumed Baseline attrition per year, as labeled. That is the expected reduction in the New York State baseline renewable generation. It is not an error, and it is not the project attrition percentage assumed by NYSERDA for procurement purposes.
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**State Comptroller’s Comment** – PSC neglected to report that the 20% only applies to Tier 1 projects—which is less than half of the projects expected to be used to reach the 70%. Further, concerns exist with the offshore wind projects because of a variety of issues such as inflation, supply chain issues, and availability of materials. While no contracts have officially been canceled, trends show that some of these contracts may have to be amended through a competitive bid process, which may ultimately raise the cost of these projects. In the event an agreement on price cannot be made, it is possible that these contracts may be terminated, and PSC has to plan for this scenario.

**Energy Storage and Transmission Constraints:**

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

**Department Response:**

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

**State Comptroller’s Comment** – In April 2024, we issued an audit of the Office of Renewable Energy Siting (ORES), which is now part of PSC, that noted, while the overall time between application and final siting permit has improved since the creation of ORES,
the process has taken significantly longer than originally envisioned because certain aspects of the process were not considered. For the 15 projects ORES reviewed, we found that neither the time to issue a notice of incomplete application and for the applicant to respond nor the time prior to an application’s transfer to ORES was taken into consideration. For the 14 projects that received final siting permits, it took an average of 3 years to deem the application complete—the longest part of ORES’s process—and, overall, an average of 3.7 years from the initial application date to the date the final siting permit was issued.

- We agree that present day energy storage technology is not adequate to meet the projected needs. The Energy Storage Roadmap, approved by the PSC and announced by Governor Hochul on June 20, 2024, identifies research and development needs to accelerate technology innovation, particularly for long-duration energy storage, and recommends approaches to storage deployments in a manner that furthers the State’s efforts in replacing New York’s most polluting fossil fuel facilities, among other things.

- We accept the NYISO’s Power Trends conclusion that dispatchable zero emissions technologies will be necessary to maintain system reliability in the future. Department Staff are fully engaged in efforts to identify potentially valuable technologies that can meet this need. For example, the Department recently engaged stakeholders in a technical conference to discuss the technologies needed to meet the Zero by 2040 goal, and the Commission has approved or is considering funding for energy storage (Energy Storage Roadmap and Case 18-E-0130 and existing nuclear (see page 19 of the Order Adopting a Clean Energy Standard).

**Project Cancellations:**

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

***OSC Draft Report page 14***

**Department Response:**

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

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

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

**Expiring Contracts and REC Price Agreements:**

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

**Department Response:**

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

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

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

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

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

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

**Department Response:**

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

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

Gap Between Renewable Energy Projections and Current Generation:

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

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

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

Department Response:

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

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

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

**Incomplete Cost Assessment and Ratepayer Burden**

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

The 10-point plan announced in October 2023 indicates that cost savings realized through federal
Department Response: Under state law, the only mechanism the Commission has at its disposal to pay for CLCPA implementation is through its ratemaking authority and authorization of ratepayer funding. The Legislature, through the CLCPA, did not identify funding sources to achieve the goals and did not authorize any other means for the Commission to achieve the CLCPA goals. That said, and as documented above, the Commission has leveraged alternative funding sources, including federal funding and State and local government initiatives that reduce ratepayer costs. The Department welcomes any efforts by the OSC to identify or obtain additional sources of funding to meet the CLCPA goals and will incorporate any such funding into future orders to offset ratepayer costs.

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

Reliance on Fossil Fuels

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

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

Department Response:

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

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

OSC Recommendations and Department Responses

OSC Recommendation 1: “Begin the required comprehensive review of the Climate Act, including assessment of progress toward the goals, distribution of systems by load and size, and annual funding commitments and expenditures.” OSC Draft Report page 27

Department Response:

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

The Commission relies on NYSERDA’s competitive solicitation process as the mechanism to procure RECs to meet the CLCPA goals, and the Department regularly monitors NYSERDA’s compliance with procurement schedules and requirements regarding these goals. For example, the CES Modification Order requires that NYSERDA conduct annual solicitations that are planned to solicit an average of 4,500 gigawatt hours (GWh) of land-based renewable energy per year through 2026 to meet the 70 by 2030 goal. Of note, consistent with the CES Modification Order NYSERDA factored in a 20 percent attrition rate when determining the annual number of MWhs to procure. The Commission initiated a biennial review process in the CES Modification Order, to formally evaluate the performance of the competitive solicitations administered by NYSERDA and to identify opportunities to improve the program. The CES Modification Order also created a new CES Tier 4 related to renewable energy either located in or directly injected into New York City. The CES Modification Order resulted in NYSERDA soliciting two projects, one of which (the Champlain Hudson Power Express) is under construction and expected to inject up to 10,402 GWh into New York City annually. More recently, the Commission denied petitions filed by renewables generators to renegotiate their contracts with NYSERDA on the grounds that cost effectiveness is best determined through the NYSERDA competitive solicitation process, not through a formulaic contract amendment process.

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

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

State Comptroller’s Comment – It should be noted that our audit was engaged in January 2022 with the objectives to determine if PSC and NYSERDA adequately planned to achieve the Climate Act goals, followed proper procurement practices for projects designed to reach the goals, and appropriately tracked and monitored progress toward meeting those goals. PSC issued a CLCPA Initiating Order in May 2022 (5 months after our engagement and 2 years after the CLCPA was enacted) to track and assess progress toward meeting the CLCPA goals, and the Department staff provided the first Annual Informational Report on Overall Implementation of the CLCPA to the PSC in July 2023. In October 2023, the State and NYSERDA issued their 10-point plan.
**OSC Recommendation 2**: “Continuously analyze the existing and emerging risks and known issues to ensure they are evaluated and addressed to minimize impact on the State’s ability to meet Climate Act goals.” OSC Draft Report page 27

**Department Response:**

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

**OSC Recommendation 3**: “Analyze the expected renewable energy generation of projects that are not yet operable, taking into consideration the possibility of project cancellation (e.g., using the known historic cancellation rate) to provide a more accurate representation of the likelihood of and progress toward achieving Climate Act goals. Additionally, update the expected dates for when the projects under construction will be operational.” OSC Draft Report page 27

**Department Response:**

The Department and NYSERDA are constantly analyzing the status of renewable energy generation projects and contracts to monitor progress and compliance with milestones. NYSERDA is the administrator of the Commission’s CES program and is the direct counterparty to all the renewable generation REC contracts. In that capacity, NYSERDA has direct and ongoing communications with project developers pertaining to upcoming solicitations and compliance with REC contracts. Pursuant to the Commission’s statutory obligations under PSL § 66-p, Department Staff continuously engages with NYSERDA staff regarding its role as administrator of the CES program, including consultation regarding (i) any substantive and procedural changes underlying NYSERDA’s solicitations, (ii) potential awards associated with renewables solicitations, and (iii) the awarded developers’ compliance with project milestones established in RECs contracts, including those related to state and local permitting, and the NYISO interconnection process. NYSERDA also keeps Department staff apprised of supply chain disruptions impacting the delivery of renewable energy facility components, potential difficulties regarding access to capital by renewables developers, the latest market data, attrition rates and parallel procurement project development amongst offshore wind, large scale land-based renewables, and distributed solar. NYSERDA and the Department take into consideration the possibility of project cancellation, using a 20 percent attrition rate, which is higher than the historical average of 6 percent. By using
the more conservative 20 percent attrition rate, NYSERDA and the Department are able to factor in macroeconomic changes that may unexpectedly impact its entire portfolio. Information from these discussions is used by the Department Staff to track compliance with the CES Modification Order and, in coordination with NYSERDA, determine the MWh levels of future REC procurements.

**OSC Recommendation 4:** “Conduct a detailed analysis of cost estimates to transition to renewable energy sources and meet Climate Act goals. Periodically update and report the results of the analysis to the public.” *OSC Draft Report page 27*

**Department Response:**

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

**OSC Recommendation 5:** “Assess the extent to which ratepayers can reasonably assume the responsibility for covering Climate Act implementation costs. Identify potential alternative funding sources.” *OSC Draft Report page 27*

**Department Response:**

The Public Service Law requires the Commission to ensure that rates are just and reasonable; thus, every Commission decision considers impacts to ratepayers. For this reason, when clean energy programs are initiated, there is a cost and bill impact included for the Commission to consider in its ultimate decision making. To date, all Commission orders issued to implement provisions of the CLCPA provide either or both a benefit cost analysis (BCA) consistent with the Commission’s BCA Framework Order (*Case 14-M-0101*, Issued January 21, 2016) or analysis of the potential ratepayer impacts across the State’s major electric utilities. The Commission also utilizes varying methods of cost recovery to levelize the impact on rates over the life of the investment.

It is important to emphasize that, because the CLCPA was passed outside of the budget without any mechanism to provide funding, the only tool the Commission has at its disposal to pay for the investments necessary to transform the State’s energy systems and address energy affordability is through its utility rate-making power. The Commission does not have taxing authority, bonding authority, or other vehicles to pay for significant investments necessary to comply with the CLCPA. As outlined in the First CLCPA Report, to date the majority of the State’s climate investments related to achievement of the CLCPA are being supported by utility ratepayer funds, so it is critical that we work across all branches of government to find the most cost-effective solutions and funding mechanisms for meeting the goals of the CLCPA while continuing to maintain energy affordability, and the reliability and resilience of our energy systems.
In addition, the DPS and other State agencies, advocate for federal funding opportunities to the greatest extent possible and encourage State and local government clean energy initiatives that have the effect of lowering ratepayer costs as evidenced above. We do note that many of the renewable generation projects are able to take advantage of tax credits under the IRA, which expanded prior federal credits and created new ones, which results in lower costs of procurement of RECs and distributed solar.

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

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

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

Sincerely,

Rory M. Christian
Chair and Chief Executive Officer
July 1, 2024

Nadine Morrell Audit Director
Office of the New York State Comptroller
Division of State Government
Accountability 110 State St.
Albany, NY 12236


Dear Director Morrell:

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

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

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

Regarding Recommendations

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

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

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

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

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

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

General Feedback

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

State Comptroller’s Comment – No changes are needed. As is our normal practice, changes to the audit scope and objectives were shared with agency officials. The draft report simply puts
the scope of the audit into context—as noted on page 1 of our report, "The Climate Act builds on the 2015 New York State Energy Plan and the Clean Energy Standard."

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

Specific Feedback

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

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

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

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

We offer a small correction to the audit finding that “Tier 1 procurement RFPs issued in 2017 and 2018 … did not fully comply with NYSERDA’s internal procurement guidelines.” See the Draft Report at p. 22. The discrepancy here, which was discovered during the scoring process and which, as the report notes, NYSERDA remedied before awards were finalized, was that a clause in the 2017/18 internal scoring guidance did not comport with the RFPs due to including holdover language from its predecessor program. That errant provision was disregarded, the relevant clause of the RFP observed, and awards were properly made.
We observe a number of minor inaccuracies in the first paragraph on page 15, the most substantive of which is the projects referenced in the sentence that begins “Two other projects that were canceled resubmitted bids ....” These two projects were not canceled; their contracts remained in place and the contracts were replaced by the new contracts signed on May 31, 2024.

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

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

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

**Conclusion**

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

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

Sincerely,

Doreen M. Harris
President and Chief Executive Officer
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