Columbia Law School | COLUMBIA CLIMATE SCHOOL
SABIN CENTER FOR CLIMATE CHANGE LAW

New York Power Authority
nyparenewablesconferral@nypa.gov
Via email

August 13, 2024

RE: Comments of the Sabin Center for Climate Change Law on the New York Power Authority's 2024 Conferral Process

The Sabin Center for Climate Change Law at Columbia Law School (Sabin Center) submits this comment letter to provide feedback and recommendations on how the New York Power Authority (NYPA) can and should support the achievement of the state's climate goals pursuant to the Climate Leadership and Community Protection Act of 2019 (CLCPA).

These recommendations touch briefly on two distinct topics: transmission and generation. First, the Sabin Center encourages NYPA to continue developing "priority transmission projects" that will alleviate bottlenecks to the deployment of renewable energy facilities. To the greatest extent possible, NYPA should focus its resources on projects that will have the maximum impact on decarbonization of the grid, including projects that will allow natural gas peaker plants to be retired as soon as possible—and, before retirement, run less. Second, to the extent NYPA is planning to build solar facilities on farmland, either alone or in partnership with private developers, the Sabin Center encourages NYPA to devote resources to projects with ambitious agrivoltaics plans that allow simultaneous agricultural production on site. Building such projects will help to establish a track record for the successful deployment of agrivoltaics in New York State. Building this track record will, in turn, help to demonstrate that solar generation and agriculture can be mutually compatible, thus helping to rebut one of the more common but largely unfounded arguments against renewable energy development.[1]

BACKGROUND

Sabin Center for Climate Change Law

The Sabin Center is an academic center at Columbia University that develops legal techniques to combat the climate crisis and advance climate justice and trains the next generation of leaders in the field. The Sabin Center has written extensively about New York State's climate laws and regulations. The Sabin Center has also closely monitored developments in those laws and regulations, including by maintaining a New York State Climate Law Tracker and a CLCPA

[1] Matthew Eisenson, Jacob Elkin, Andy Fitch, Matthew Ard, Kaya Sittinger & Samuel Lavine, *Rebutting 33 False Claims About Solar, Wind, and Electric Vehicles*, Sabin Center for Climate Change Law, April 2024 (revised June 2024), at 11-14, https://scholarship.law.columbia.edu/sabin_climate_change/217.

Scoping Plan Tracker, among other resources.[2] In addition, the Sabin Center runs the Renewable Energy Legal Defense Initiative, which studies legal obstacles to the deployment of renewables and develops strategies for overcoming those obstacles.[3]

Statutory Basis for NYPA's Investment in Transmission and Generation Facilities to Help the State Meet CLCPA Targets

i. Transmission

NYPA is generally authorized by statute to construct "transmission and related facilities as it deems necessary or desirable to assist in maintaining an adequate and dependable supply of electricity" for its customers.[4] Several years ago, as part of the 2020–2021 state budget, the legislature more specifically authorized and directed NYPA to develop "bulk transmission investments found by the [New York Public Service Commission (PSC)] to be needed expeditiously to achieve CLCPA targets."[5] These projects are defined by statute as "priority transmission projects."[6]

ii. Generation

NYPA has similar authority to construct generation facilities.[7] Recently, as part of the 2023–2024 state budget, NYPA was authorized and directed to "plan, design, develop, finance, construct, own, operate, maintain and improve, either alone, or jointly with other entities through the use of public-private agreements . . . renewable energy generating projects in the state."[8] The law specified, however, that NYPA should not develop any project on farmland unless it were "in furtherance of an agrivoltaics project."[9]

Importantly, the same law that granted NYPA the power to build renewables also directed NYPA to cease generation at small natural gas power plants (*i.e.*, peaker plants) by the end of 2030, unless NYPA determines that those plants are still needed for emergency purposes or system reliability.[10]

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[2] New York State Climate Law Tracker, Sabin Center, https://climate.law.columbia.edu/content/new-york-state-climate-law-tracker; CLCPA Scoping Plan Tracker, Sabin Center, https://climate.law.columbia.edu/Scoping-Plan-Tracker.
[3] Renewable Energy Legal Defense Initiative, Sabin Center, https://climate.law.columbia.edu/content/renewable-energy-legal-defense-initiative.
[4] N.Y. Pub. Auth. Law § 1005.
[5] *See* Accelerated Renewable Energy Growth and Community Benefits Act of 2020 at § 7(5).
[6] *Id.*
[7] N.Y. Pub. Auth. Law § 1005.
[8] N.Y. Pub. Auth. Law § 1005(27-a)(a)(i).
[9] N.Y. Pub. Auth. Law § 1005(27-a)(b)(i).
[10] N.Y. Pub. Auth. Law § 1005(27-c)(a).

RECOMMENDATIONS

NYPA Should Concentrate Its Transmission-Related Investments on Developing the Projects with the Greatest Potential for Decarbonization

At the outset, the Sabin Center acknowledges that NYPA is already undertaking and planning to undertake substantial investments to meet CLCPA goals. In its VISION2030 report, for example, NYPA explained that its strategy for transmission would include: (a) "[i]nvesting $200 million to $400 million annually to grow NYPA's transmission asset base by three to five times by 2030," (b) focusing on "projects that balance system planning, returns and wider state objectives," and (c) "[a]ccelerating New York State's most critical transmission projects in support of CLCPA goals."[11] In that report, NYPA also identified several priority projects that are "likely to be located in the Western and Northern parts of the state to facilitate shifting Renewable Energy Source load to higher demand areas (e.g., downstate)."[12] Moreover, just two weeks ago, NYPA and New York Transco LLC submitted an application to the PSC for the approval of the Propel NY Energy project, which would involve the construction of approximately 90 miles of buried transmission cables to help bring renewable energy to the downstate region.[13]

This is a good start. Looking forward, as NYPA considers making additional transmission-related investments to help the state meet its CLCPA goals, including but not limited to any priority transmission projects identified by the PSC, it should prioritize the following: (a) projects that will have the greatest impact on debottlenecking the queue for renewable energy generation facilities; (b) projects that will have the greatest impact on decarbonization; (c) projects that allow natural gas peaker plants, which cause adverse climate and human health impacts, to be taken offline as soon as possible—and, in the interim, to be used less; and (d) projects necessary for debottlenecking, decarbonization, and/or retirement of peaker plants that private sector companies are unlikely to take on alone, whether because of economics, complexity, or other factors.

NYPA Should Devote Resources to Developing Ambitious Agrivoltaics Projects that Set a Precedent for Successful Deployment in New York State

NYPA's power to build renewables is relatively new, and it is too early to comment on NYPA's track record of building such facilities. However, in the event that NYPA decides to devote resources to developing any solar projects on farmland, the Sabin Center recommends that NYPA pursue projects with an ambitious agrivoltaics component, above and beyond the minimum standard required by law.

Conflict over the use of agricultural land is a significant impediment to renewable energy development across the country and in New York State specifically.[14] Indeed, researchers from

[11] New York Power Authority, VISION2030, at 9, https://www.nypa.gov/-/media/nypa/documents/document-library/vision2030/nypa-vision2030.pdf.
[12] *Id.*
[13] Propel NY Energy, News, https://www.propelnyenergy.com/news.
[14] *See generally* Matthew Eisenson, Jacob Elkin, Harmukh Singh & Noah Schaffir, *Opposition to Renewable Energy Facilities in the United States: June 2024 Edition*, Sabin Center for Climate Change Law, June 2024, https://scholarship.law.columbia.edu/sabin_climate_change/226.

Lawrence Berkeley National Laboratory have identified concerns about the loss of agricultural land as one of the main root causes of local opposition to solar facilities.[15] More specifically, there is a pervasive but unfounded concern that building solar facilities on farmland poses a threat to the food supply.[16] In addition, there is also a pervasive concern that building solar facilities on farmland will displace jobs in the farming industry,[17] which is largely overstated.[18]

Agrivoltaics, which involves the dual use of land for solar generation and farming, provides an opportunity to address any concerns about the loss of farmland by keeping the land in production and providing employment opportunities for agricultural workers. Because this practice is relatively new, there are relatively few examples of deploying agrivoltaics at scale in New York State. However, examples are beginning to emerge in other states.[19] To the extent NYPA decides to develop solar projects on farmland, it should pursue ambitious demonstration projects that maintain high levels of agricultural production. Building these projects could help to demonstrate that solar development can be compatible with farming and that agrivoltaics can be achieved at scale, thereby addressing a major source of opposition to renewable energy projects.

Respectfully submitted,

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[15] Robi Nilson et al., Survey of Utility-Scale Wind and Solar Developers Report, Berkeley Lab (Jan. 2024), at 22, https://emp.lbl.gov/publications/survey-utility-scale-wind-and-solar.
[16] Matthew Eisenson, Jacob Elkin, Andy Fitch, Matthew Ard, Kaya Sittinger & Samuel Lavine, *Rebutting 33 False Claims About Solar, Wind, and Electric Vehicles*, Sabin Center for Climate Change Law, April 2024 (revised June 2024), at 11-14, https://scholarship.law.columbia.edu/sabin_climate_change/217.
[17] *See, e.g.,* How Solar Affects You!, No To Solar, https://www.notosolar.com/how-solar-affects-you ("[A] [s]ubstantial amount of revenue is shifted out of the agricultural realm when farmland is developed into solar farms. This results in a loss of jobs, loss of farm equipment and supplies sold, and a loss of consumer produce.").
[18] 5 Moser Suppl. Testimony, Attachment SM-1, Agricultural Economic Impacts in Oak Run Solar Project, In re Application of Oak Run Solar Project, LLC, Nos. 22-549-EL-BGN, 22-550-EL-BTX (O.P.S.B. May 11, 2023), at 3, 22-27, https://dis.puc.state.oh.us/ViewImage.aspx?CMID=A1001001A23E11B60909C02064 (finding that ambitious agrivoltaics plans will support more farming-related jobs on the same land than farming alone).
[19] In Ohio, for example, state authorities recently approved the 6,050-acre Oak Run Solar Project, which will be required to incorporate 4,000 acres of crops and 1,000 sheep on site. *See* Matthew Eisenson, *Ohio Approves Nation's Largest Agrivoltaics Project, Finding It Will Serve the Public Interest*, Climate Law Blog, Apr. 1, 2024, https://blogs.law.columbia.edu/climatechange/2024/04/01/ohio-approves-nations-largest-agrivoltaics-project-finding-it-will-serve-the-public-interest/.