



March 18, 2021

Honorable Andrew Cuomo
Governor of New York State
New York State Capitol Building
Albany, NY 12224

Honorable Andrea Stewart Cousins
Majority Leader, New York State Senate
Legislative Office Building, 907
Albany, NY 12247

Honorable Carl Heastie
Speaker, New York State Assembly
Legislative Office Building, 932
Albany, NY 12248

Re: Proposed Wage and Material Mandates on Renewable Energy Projects

Dear Governor Cuomo, Majority Leader Stewart Cousins and Speaker Heastie:

The undersigned are writing to share our concern and opposition to provisions included in the Senate and Assembly one-house budget bills related to new labor and material requirements on renewable energy projects, and we urge the Executive and the Legislature to reject these proposals.

Specifically, the Senate budget bill (S.2506-B, Part AA) and the Assembly budget bill (A.3006-B, Part AA) would: (i) require renewable energy projects to have a project labor agreement with organized labor to provide workers for “necessary operations and maintenance services” associated with the project; (ii) require renewable energy projects to use iron and structural steel in such projects that is “produced or made in whole or substantial part in the United States, its territories or possessions”; and (iii) subject to the prevailing wage requirement any renewable energy project over 5 megawatts (MW) (alternating current) that receives *any* public funds and which involves the procurement of renewable energy credits by a public entity or agent third-party.

The renewable energy industry is proud to have worked closely and collaboratively with our New York State government partners to promote our shared goals of developing renewable energy capacity to ensure New York has the necessary supply of cost-effective energy to power our homes, businesses and economy, while also seeking to reverse the dramatic increases in greenhouse gas emissions which have had devastating impacts upon our climate. Our



collaboration has resulted in numerous nation-leading policies, including the landmark Climate Leadership and Community Protection Act, that provide a roadmap for the Federal government and other states to battle climate change. We do not want to see our progress and path to a zero-carbon energy supply threatened, especially given our many recent challenges and what is at stake.

And, while our renewable energy industries appreciate organized labor’s interest in renewables projects and we share the goal of creating good jobs for New Yorkers, these aforementioned proposals will be damaging in our efforts to meet the state’s climate and environmental goals - at worst, and are unnecessary or premature - at best.

To begin with, the renewable energy industry is only now beginning to recover from the economic shutdown experienced during the height of the COVID-19 pandemic. The solar industry, for instance, was prohibited from continuing to develop projects during NY PAUSE, resulting in a significant contraction in the industry. Some companies, suppliers, and related employers that entered into NY PAUSE never emerged. In light of this economic environment, requiring additional mandates at this time could be damaging to our joint renewable energy efforts.

It is also premature since the expansion of the prevailing wage mandate to a greater number of renewable energy projects was only enacted in April 2020 (Chapter 58 of the Laws of 2020, Part FFF) and that law has not even gone into effect yet. It would be reasonable to ensure the prior mandates are in effect and there is an opportunity to consider their impacts before expanding them even further, as the Senate and Assembly budget bills propose to do.

We would also urge you to consider specific concerns related to these proposals, as follows:

- Requirement that renewable energy projects have a project labor agreement with organized labor to provide workers for “necessary operations and maintenance services” associated with the project.
 - We are concerned with this proposal because on-site operations and maintenance services vary considerably depending on the project, and it is unreasonable to require that such workers be unionized workers. For example, most operations and maintenance work for solar energy projects is part-time and seasonal, with responsibilities such as grass cutting, snow plowing, and sporadic repair work. These part-time positions do not require specific training or expertise and are not suitable for trained, skilled labor. Renewable energy providers often contract these services out to locally based companies, sometimes years in advance. A new requirement to employ only union contractors raises serious questions about whether these contractual obligations can be met, whether a reasonable supply of union labor that is able to perform this work could be found in all areas of the state, and whether projects facing already-marginal economics could go forward when faced with these additional risks and potential costs. To mandate the hiring of union workers for these positions would thus create significant new barriers to



clean energy deployment without a discernible public policy benefit. We therefore recommend this provision be rejected.

- Requirement that renewable energy projects use iron and structural steel in such projects that is “produced or made in whole or substantial part in the United States, its territories or possessions.”
 - The U.S. solar industry relies upon both domestic and global supply chains. For example, foreign steel is shipped to the United States and used in solar racking that is made in America.¹
 - A uniform “buy American” provision, depending on how it is applied, could lead to significant supply shortages and potentially thwart existing state climate goals. Even setting aside the physical supply issues we anticipate, it will be difficult for projects to secure financing for future projects that may be subject to this provision, given the unknown timing and nature of the opt-out provisions in the budget bills and the vagueness of the current language with respect to what may be deemed “practicable.”
 - New York should instead support Federal action related to domestic manufacturing of the materials that are essential for the development of renewable energy projects, which is a priority for the Biden Administration, and should reject requirements that create uncertainty as to whether a project can be compliant with state law.

- Requirement that prevailing wages be paid on any renewable energy projects over 5 megawatts (MW) (alternating current) that receive *any* public funds if it involves the procurement of renewable energy credits (RECs) by a public entity or agent third-party. Current law, enacted less than one year ago, provides that the prevailing wage mandate only applies to renewable energy projects that are greater than 5 MW and which receive a state public incentive of more than 30 percent of the project cost and has a total project cost of over \$5 million. This proposed amendment would eliminate the 30 percent/\$5 million threshold - and subject all projects over 5 MW and which involve procurement of RECs to the prevailing wage mandate.
 - While we appreciate that the proposal preserves the reasonable exemption for projects 5 MW and below, it is unclear why a requirement that is less than one year old and which is not even in effect yet, must be amended to potentially apply to more projects.² At a time when we should be encouraging more projects in order to achieve the lofty goals for renewable energy generation, the potential cost increases associated with this particular proposal are troubling and may be counterproductive.

¹ <https://www.thesolarfoundation.org/wp-content/uploads/2020/03/SolarJobsCensus2019.pdf> At 30.

² Language included in any final legislation should be clarified to say projects “greater than 5 MW” given that many distributed projects are exactly 5 MW in size.



Our industries are dedicated to our shared goals of reducing greenhouse gas emissions, battling climate change and creating a green economy that produces good jobs for New Yorkers. It is critically important to understand the unintended consequences of the above mentioned proposals at a time when our industries are only beginning to recover from the COVID-19 pandemic. We urge the Executive, the Senate and the Assembly to work with us to ensure that we can do so, and to not impose new impediments, such as those referenced above, to achieving our clean energy future.

We appreciate your consideration of this request, and we welcome a discussion as to how we can resolve these concerns.

Sincerely,

/s/

David Gahl, Senior Director of State Policy, East
Solar Energy Industries Association

/s/

Shyam Mehta, Executive Director,
New York Solar Energy Industries Association

/s/

Kaitlin Kelly O'Neill, Northeast Regional Director
Coalition for Community Solar Access

/s/

Anne Reynolds, Executive Director
Alliance for Clean Energy New York

Cc: Hon. Todd Kaminsky
Hon. Steve Englebright
Hon. Kevin Parker
Hon. Michael Cusick