

BEFORE THE STATE OF NEW YORK PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission  
to Implement a Large-Scale Renewable  
Program and a Clean Energy Standard

Case 15-E-0302

**PETITION FOR REHEARING OR CLARIFICATION OF THE ORDER OF  
AUGUST 1, 2016 ADOPTING A CLEAN ENERGY STANDARD**

Alliance for Clean Energy New York  
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**I. INTRODUCTION**

The Alliance for Clean Energy New York (ACE NY) respectfully submits this Petition for Rehearing or Clarification of the New York Public Service Commission's August 1, 2016 Order Adopting a Clean Energy Standard issued in the above-referenced proceeding, pursuant to Rule

3.7 of the New York State Public service Commission's (Commission) Rules of Practice and Procedure.<sup>1</sup>

ACE NY is a coalition of energy industry and environmental interests working together to promote clean energy, energy efficiency, a healthy environment and a strong economy for New York State. ACE NY has been an active participant in this Clean Energy Standard proceeding, the Large Scale Renewables proceeding before it, and the Renewable Portfolio Standard proceeding for the past ten years. The 50% by 2030 renewable energy mandate, which is to be implemented by the Clean Energy Standard (CES), is an important milestone in New York's efforts to shape a clean energy future and is enthusiastically supported by ACE NY. Our organization welcomed the Order Adopting the Clean Energy Standard. We do, however, have serious concerns with the Commission's position with respect to renewable energy resources operating prior to 2015, as articulated in the CES Order, and believe it is necessary and appropriate for the Commission to reexamine and clarify issues associated with pre-2015 renewable energy generators.

## **II. DISCUSSION**

On January 21, 2016 the Commission expanded the scope of the ongoing large-scale renewable proceeding to encompass the new CES, a policy framework designed to implement the 50% renewable energy goal included in New York's State Energy Plan, and directed the Department of Public Service Staff (Staff) to develop a White Paper that proposed a structure for the CES. The Staff White Paper on the Clean Energy Standard (White Paper) was issued on January 25, 2016. Among its recommendations was, "Establishment of CES tiers to support a growing quantity of new renewable generation, as well as continued contribution of existing renewables and zero emission resources;" and an obligation on all load serving entities (LSEs) to procure renewable energy credits for both new ("Tier 1") and existing ("Tier 2") renewable energy generators. The White Paper provided a rationale for the establishment of Tier 2, stating "States may seek to protect existing clean energy generators, either because of the environmental benefits that those generators provide or because the power plants are perceived to be valuable

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<sup>1</sup> 16 NYCRR § 3.7

local businesses that provide jobs and other economic benefits.”<sup>2</sup> Specifically, “Staff proposes the establishment of Tier 2 to support the substantial fleet of non-State owned or contracted renewable energy generators already in operation and available to meet New York’s CES targets from within New York or adjacent control areas.”<sup>3</sup> Staff further recommended that Tier 2 be divided up into sub-tiers to reflect differing circumstances and market opportunities facing different existing generators. Under this proposal, LSEs would have been required to procure RECs from Tier 2 resources, in an amount ranging from 17,261 GWh in 2017 to 18,630 GWh in 2020.<sup>4</sup>

While the White Paper proposal for Tier 2 was not discussed nor debated in any subsequent Technical Conferences held in this proceeding, the Commission Order diverged substantially from the staff recommendation. Under the Order, Tier 2 excludes all renewable energy resources that began operation after 2003; Tier 2 excludes hydropower greater than 5 MW; and the CES does not include an obligation for LSE’s to purchase Tier 2 resources. Instead, the Order continues the Maintenance Tier that has existed for the past ten years under the RPS Program. By way of rationale, the Order stated that Tier 2a was not necessary because the “facilities that staff proposed to classify under Tier 2a have all likely already recovered all or most of their initial capital costs and only need to obtain market revenues . . .” (although the same could be said for nuclear facilities) and that Tier 2b wasn’t necessary because these facilities have no competitive opportunity to export RECs. The Order also directed DPS staff to review the maintenance program requirements to, “determine whether changes are necessary to align support with zero-emissions facilities . . .”<sup>5</sup>

a. **The Commission made a factual error in its decision that existing renewable energy resources are not at risk due to closure or export.**

In the CES Order, the Commission made an error of fact in its determination that “there is no imminent risk of losing the emission attributes associated with the facilities.” In fact, several

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<sup>2</sup> Staff White Paper on Clean Energy Standard (CASE 15-E-0302), January 25, 2016, Page 17

<sup>3</sup> Staff White Paper on Clean Energy Standard (CASE 15-E-0302), January 25, 2016, Page 22.

<sup>4</sup> Staff White Paper on Clean Energy Standard (CASE 15-E-0302), January 25, 2016, Page 45.

<sup>5</sup> Order Adopting Clean Energy Standard (CASE 15-E-0302), August 1, 2016. Appendix F

renewable energy generators have real and imminent opportunities to sell RECs from operating resources into neighboring states, including existing contracts. The White Paper itself stated as much when it said, “This sub-tier is intended to provide sufficient revenue to attract supply for which New York must compete with other states, and may be critical to keeping all or most of the supply rolling off NYSERDA Main Tier projects from seeking higher revenues for provision of RECS in neighboring markets.” The Order did not include convincing arguments to contradict this statement from the White Paper, and the Order’s positions with respect to Tier 2 are not supported by the record. Other states that provide current opportunities for existing New York renewables include: Maryland, covering a host of new and existing renewable technologies under its Tier 1 program; Connecticut, where existing hydropower used to firm a new renewable resource is eligible for direct procurement; and Vermont, where new and existing renewable resources qualify to achieve their legislated renewable targets, even if originated from out-of-state. This is in addition to direct RPS program eligibility in other nearby states, including Maine and Massachusetts, for existing renewables located in adjacent control areas. NEPOOL GIS data<sup>6</sup> provide evidence that renewable energy attributes have already begun to be exported out of state effective in the first quarter of 2016 when a large renewable energy project completed the term of its Main Tier agreement in New York. There are several additional large projects in New York that will be coming off of NYSERDA REC contracts resulting from the second Main Tier solicitation in the near future, and we can expect to see further exports into adjacent markets.

The Commission’s decision that Tier 2a was unnecessary was based, in part, on the statement that proposed Tier 2a projects, “have all likely already recovered all or most of their initial capital costs and only need to obtain market revenues sufficient to fund their comparatively low, going-forward operation and maintenance costs. These are primarily wind generation facilities that have no fuel costs unlike other large scale electric generation facilities and should be profitable even under today’s lower market prices for energy and capacity.” The Order offers no data nor evidence to contradict statements in the White Paper that clearly disagree with this position. Further, a material fraction of proposed Tier 2A resources were biomass resources.

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<sup>6</sup> NEPOOL GIS data, see: <http://www.nepoolgis.com/public-reports/>

These resources may have high going-forward operation and maintenance costs, primarily due to their fuel costs. These facilities are clearly not profitable under today's depressed market prices for energy and capacity.

Similarly, the Commission's decision to continue the Maintenance Tier program of the RPS as part of the CES is not supported by the record. The Staff LSR Options Paper and CES White Paper identified a clear rationale for the adoption of Tier 2 support, including the statement, "it is inevitable that in the absence of a New York policy stimulating demand that creates sufficient value for Legacy LSR RECs, the energy and RECs from some or all of the resources are likely to leave the market" (LSR Options Paper at 115). Again, the Order did not provide evidence to contradict this statement from the LSR Options Paper.

The Commission's reasoning that "given the vintage and delivery requirements in other states it remains merely hypothetical that there will be mass flight of these resources" is not backed up by further evidence and is not supported by evidence on the record. There are significant opportunities for export. These opportunities include facilities currently commercially participating in the recent New England Clean Energy RFP as well as out-of-state program eligibility among others. In one example, the 2014 compliance report for the Massachusetts RPS<sup>7</sup> reports that only 24.1% of the total MA RPS compliance obligation is met by resources located within Massachusetts, while 19% of the obligation is met by wind and landfill gas projects located in New York State. Over time, there is no reason to believe that this percentage contribution from New York will not increase, given that renewable projects in New York are coming off state contracts, that the REC prices in Massachusetts are attractive; and that demand under the MA RPS will continue to grow.

**b. There are new circumstances affecting the likelihood of export of existing renewable energy resources.**

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<sup>7</sup> *Massachusetts RPA & APS Annual Compliance Report for 2014*, May 14, 2016. Massachusetts Department of Energy Resources; <http://www.mass.gov/eea/docs/doer/rps-aps/rps-aps-2014-annual-compliance-report.pdf>

Further, there are new circumstances that have arisen since the Order was issued, in that the Commonwealth of Massachusetts has enacted new legislation that requires distribution utilities to procure RECs and energy, using power purchase agreements (PPAs) for which operating generators in New York will be eligible to compete. On August 8, 2016 the State of Massachusetts signed into law the Act Relative to Energy Diversity, which includes requirements for state utilities to procure 9.45 TWh of hydropower, Class I renewables, and hydropower balancing Class I renewables, with the first solicitation required to occur by April 1, 2017. Existing hydropower resources are eligible to participate in procurements arising from this legislation, including hydropower resources located in New York State. The Massachusetts Department of Energy Resources has issued Statements of Qualification for the Massachusetts RPS Class 1 for numerous facilities in New York, including seventeen wind facilities and twenty-one landfill gas facilities.<sup>8</sup> When coupled with current competitive opportunities, there now exists a significant and growing out-of-state market for existing renewable generation in New York. In the absence of New York State policies which offer value to pre-2015 large-scale renewable generators choosing to remain in this market, there is no reason to believe initiatives like the Massachusetts legislation will not provide precisely the sort of enticements to leave the in-state market Staff warned of in the CES White Paper and Large Scale Renewables (LSR) Options Paper.

- c. **New York cannot count existing renewables towards achievement of the 50% mandate without compensation to the generators and retirement of the compliance RECs associated with those resources. Doing so endangers achievement of the 50% mandate and causes confusion regarding sales of RECs into other markets.**

The Commission's decision with respect to Tier 2, especially the exclusion of existing renewable resources that began operation after 2003 and hydropower facilities with capacity greater than 5 MW, provides no compensation to generators for the renewable energy credits (RECs) minted

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<sup>8</sup> See Massachusetts RPS/APS Qualified Generation Units listed at: <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/qualified-generation-units.html>

from these excluded facilities, nor does it provide clarity with respect to the treatment of either Tier 2 RECs or RECs from these excluded facilities in the New York Generation Attribute Tracking System (NYGATS). At the same time, these RECs are accounted for in the Order in the Baseline Renewable Resource Adjustment, estimated at 41,296,000 MWh (including State-owned hydropower).<sup>9</sup> This construct, as outlined in the Order, appears to assume these RECs from existing renewables will remain in-state and count towards the 50% mandate despite the failure of the CES program to compensate these resources for their RECs. If these RECs were sold out-of-State, this would raise serious concerns of double counting. The CES Program may, in effect, risk double-counting RECs generated by these resources and sold into adjacent markets such as ISO-NE and jeopardize certification of the RECs as Green-e, limiting the ability of these existing resources to monetize the RECs.

This issue was discussed in Appendix D of the White Paper, where Staff said: “In the absence of a New York policy that creates sufficient value for RECs from Legacy RPS Projects, the energy and RECs from most of these resources are likely to leave the market, most likely to the New England states, as their owners search to maximize revenues. This departure would preclude New York's ability to claim that renewable energy supply toward CES goals, as the right to make such claims accrues to the rightful purchasers of the associated RECs.” This statement was not contradicted or settled in the Order, and this issue of potential double counting deserves clarification by the Commission.

In short, by establishing a 50% by 2030 requirement in New York, and then counting all existing renewable resources towards that 50% mandate, but not providing a mechanism for compensating those existing renewables at a value that is competitive with adjacent markets, the CES Program is creating confusion, market disruption, and unfair complications for existing generators. With or without a compensation mechanism for existing resources in the CES, existing resources should be eligible and able to sell attributes in adjacent markets and export their energy and renewable energy attributes in those markets. The Commission should both re-consider providing a compensation mechanisms for these resources, and should clarify that

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<sup>9</sup> Order Adopting a Clean Energy Standard (CASE 15-E-0302), page 84.

resources will not count toward the New York 50% mandate if they are exporting their energy or attributes.

The Order states that RECs will be tracked in NYGATS for both imports and in-state resources. It does not clearly state that NYGATS will also be used to track exports. NYGATS needs to account for these exports for a variety of reasons: to determine whether New York is achieving the 50% by 2030 goal and interim milestones; to make sure that resources are not being counted towards RPS compliance in more than one jurisdiction; and to understand the nature of the competition for RECs between states. Without additional clarification on treatment of exports, the CES Order could be interpreted to result in the state taking ownership over renewable energy credits that are not owned by state entities and for which appropriate compensation has not been paid, which may also result in the potential for double-counting toward renewable energy mandates in more than one jurisdiction.

- d. Tier 2 eligibility should be broadened to include all technology types eligible for Tier 1 that were in operation before 2015. These resources have the same environmental attributes, and their leaving the state would have the same affect on climate goals, local economies, and the achievement of the 50% mandate as other resources included in the CES. Differential treatment of these resources is arbitrary.**

The Order provides limited eligibility for Tier 2, including only facilities operating prior to January 1, 2003 that were counted in the original RPS baseline. It is further limited to hydroelectric facilities of 5 MW or less; wind turbines; and biomass facilities that comply with certain fuel source requirements, as described in Appendix D of the Order. In contrast, the eligibility for Tier 2 proposed by Staff included resources operating prior to January 1, 2015, including all technology types eligible for Tier 1. The Commission's divergent decision is not supported by the record in this proceeding, and is counter to the goals of the CES. Further, the differential treatment for facilities built after 2003 versus those constructed prior to 2003 is



arbitrary and capricious. The Commission should reconsider Tier 2 eligibility to provide consistent eligibility as Tier 1, but for resources operating prior to January 1, 2015.

The 50% by 2030 mandate is in furtherance of the State Energy Plan and other state policy goals.<sup>10</sup> These include the reduction of air pollution emissions that directly affect public health (nitrogen oxides, sulfur dioxide, particulate matter) as well as the reductions of carbon emissions that contribute to climate change. State policy goals also include maintaining fuel diversity and promoting an electric grid that is “more responsive, efficient, secure, and clean.” Both components of the CES – the renewable energy standard and the Tier 3/nuclear program – are designed to achieve these goals. In the case of the zero emission credits (ZEC) portion, the program is also designed to maintain existing generation resources in operation to protect jobs, local economic activity, and low-carbon emissions.

All of these policy goals are furthered by the attributes that are provided equally by renewable resources excluded from the CES by the Order (i.e. those built between 2003 and 2015, and for hydropower with a capacity greater than 5 MW) and resources included in the CES. In fact, in so much as one objective of the ZEC program is to serve as a transition to a renewable energy future, maintenance of these existing renewable generators is more critical than support for nuclear power, as these are the technologies that represent our State’s end goal. Failure to include them in the CES program and ensure their continued operation in New York is counterproductive with respect to CES goals.

- e. **Tier 2 should be better aligned and integrated with the rest of the Clean Energy Standard structure, and should allow existing renewable resources to fully participate in the CES and contribute to achievement of 50% renewable energy by 2030.**

For all of the reasons stated above, the CES program structure should be modified to better integrate existing resources. One option for achieving this is to reconsider a Tier 2 obligation for LSEs. As described in detail in the White Paper – and supported in Comments by ACE NY and numerous other stakeholders in this proceeding -- this approach would be the most

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<sup>10</sup> Order Adopting a Clean Energy Standard (CASE 15-E-0302), page 3.

market-based; the most consistent with neighboring states; and the best aligned with the rest of the renewable energy portions of the CES. It would also be the more financially sustainable and rationale structure. A second option would be to provide support via a program that resembles the Maintenance Tier, but allow participation by all pre-2015 resources (i.e. not just those operating prior to 2003 and counted in the original RPS baseline, which is an arbitrary eligibility criterion.) A third option would be to provide access to a Tier 2 REC price that is calculated using a methodology similar to the ZEC program in the CES. This third approach would properly recognize that Tier 2 resources offer the exact same zero-carbon attributes as NY's nuclear plants, and are also at risk of leaving the NY market. It may not, however, provide compensation that is competitive with neighboring RPS jurisdictions.

### **III. CONCLUSION**

For all of the foregoing reasons, and because a Clean Energy Standard (CES) that does not better integrate existing resources puts at risk the achievement of the 50% renewable energy mandate, ACE NY respectfully requests a limited rehearing of the Order Adopting a Clean Energy Standard to consider new circumstances and errors of law or fact, to reexamine the Commission positions with respect to existing renewable energy resources and Tier 2. A CES that includes a Tier 2 that is inclusive of all existing renewables (pre-2015) and allows Tier 2 resources to fully participate in the CES program will be more sustainable and successful in achieving the 50% mandate, and will better integrate with neighboring states. This approach is more likely to create a regional REC market that is competitive and rational, and avoid unintended negative consequences with respect to the potential sale of New York RECs in other compliance markets while they are being claimed in New York. Finally, this approach would value all generators that provide power without carbon emissions on an equal footing.