STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on November 17, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, concurring

CASE 15-E-0302 - Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard.

ORDER PROVIDING CLARIFICATION

(Issued and Effective November 17, 2016)

BY THE COMMISSION:

INTRODUCTION

On August 25, 2016, the New York State Energy Research and Development Authority (NYSERDA) submitted a petition requesting clarification of the Clean Energy Standard Order (CES Order) issued by the Public Service Commission (Commission) on August 1, 2016 in this proceeding. In its petition, NYSERDA seeks clarification regarding the status of generation attributes associated with NY-Sun and other Customer-Sited Tier projects in light of the CES Order's filing requirement that NYSERDA publish the number of Renewable Energy Credits (RECs) that will be available for sale for the 2017 compliance period by December 1, 2016.[1] By this order, the Commission clarifies that the obligation on load-serving entities (LSEs) in 2017 to

[1] NYSERDA's petition does not seek rehearing of the CES Order therefore the request will be treated procedurally as a motion pursuant to 16 NYCRR §3.6.

serve their retail customers by procuring new renewable resources, evidenced by procuring qualifying RECs, is a quantity of RECs equal to 0.035% of the total load served by the LSE for 2017. The target mandate of 0.035% of load for 2017 relates, in total, only to the estimated number of RECs from renewable energy projects that were not in operation prior to January 1, 2015 that will be available to NYSERDA for sale to LSEs during 2017, or 56,142 MWhs of RECs. The new renewable resources from NY-Sun and other Customer-Sited Tier projects are to be counted towards the overall goal however it is clarified that such resources are not intended to be included in amount of renewable energy the LSEs are mandated to procure in 2017.

BACKGROUND

On August 1, 2016, the Commission issued an Order Adopting a Clean Energy Standard (CES Order) which, among other things, directed every load serving entity (LSE) in New York State to invest in new renewable generation resources to serve their retail customers evidenced by the procurement of qualifying Renewable Energy Credits (RECs), acquired in quantities that satisfy mandatory minimum percentage proportions of the total load served by the LSE for the applicable calendar year as stated in the Order. The Commission set the percentage of the total 2017 load to be served by new renewable resources at 0.6%. That percentage equates to 974,000 MWh of generation from new renewable resources.

As explained in the CSE Order, LSEs may satisfy their obligation by either purchasing RECs acquired through central procurement by NYSERDA; by self-supply by direct purchase of tradable RECs; or by making Alternative Compliance Payments to NYSERDA. The CES Order requires NYSERDA to publish on its website by December 1, 2016, a REC price and the estimated quantity for RECs the Authority will offer for sale in the 2017 compliance period.

On August 25, 2016, NYSERDA filed a petition seeking clarification regarding how certain attributes associated with behind-the-meter generation funded by NYSERDA including NY-Sun and its predecessor Customer-Sited Tier projects are to be treated.

NOTICE OF REQUEST FOR CLARIFICATION

On September 12, 2016, a Notice Soliciting Comments on Request for Clarification (Notice) was issued. As part of the Notice, Department of Public Service Staff advises that in setting the 0.6% target, it was estimated that 953,000 MWh of new renewable resources were to be available from NY-Sun and other Customer-Sited Tier projects. National Fuel Cell Research Center (NFCRC); The Coalition of On-Site Renewable Users (CORE) and Second Nature; The Indicated Joint Utilities[2] (JU); The Council on Intelligent Energy & Conservation Policy (CIECP) and Promoting Health and Sustainable Energy (Phase); and the Center for Resource Solutions (CRS) submitted comments. The comments received are summarized below.

COMMENTS

National Fuel Cell Research Center (NFCRC) comments that the September 12, 2016, Notice appears to misstate the CES Order when it discusses revisiting the issue of behind the meter resources. NFCRC asserts that the CES Order discusses revisiting the issue of behind the meter load.

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[2] The Indicated Joint Utilities include Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, and Orange and Rockland Utilities, Inc.

Many of the commenters raise concerns regarding ownership of renewable resource attributes associated with behind-the-resources and the various implications of how the issue of ownership is ultimately settled. For instance, CORE and Second Nature claim that NYSERDA's petition requests an inappropriate transfer of RECs from project owners to LSE's in order to meet LSE obligations and that such transfer will destroy much of the value of behind the meter projects and with it the motivation to voluntarily invest in those projects. CORE and Second Nature further argue that ownership of renewable resource attributes is an important factor in determining "greenness." The JU's also emphasized the importance of establishing ownership and control over behind the meter resource attributes.

Commenters also posit various benefits or detriments depending on how the ownership issue is settled. CIECP/PHASE argue that private entities should be encouraged to use and generate more renewable energy and that the best way to do that is to allow owners/developers to claim their environmental attributes through RECs.

The commenters generally agree that value associated with behind the meter renewable attributes should follow the investment that led to installation the behind the meter facility. However, there is disagreement among them over whether that value should accrue to ratepayers who invested through net metering and NYSERDA grants, or facility developers/owners who invested their own resources.

Many of the comments also raise concerns of the distinction between CES target obligations or mandates and he State's Goal of 50% of the Electricity consumed in New York by 2030 by from renewable resources and the implications for the voluntary renewable market. CIECP/PHASE argue that the CES must be designed to stimulate and complement voluntary competitive renewable energy sales and purchases so that these competitive markets, not government mandates, sustain renewable activity. Similarly, CRS states that the ownership issue and the issue of voluntary versus mandated activity intersect significantly.

The JU's state that behind the meter resources should be counted toward the 2017 target in order to lower the LSE obligation and argue that this approach is particularly appropriate given the short implementation timeframe for 2017 and the ongoing discussions within the Value of Distributed Energy Resources proceeding ("Value of DER Proceeding.

DISCUSSION

Many of the comments received in response to the September 12, 2016 Notice in this proceeding make policy arguments for or against various regimes for the treatment of the renewable resource attributes of behind-the-meter resources that go beyond the scope of the intended clarification.[3] The September 12, 2016 Notice gave specific instructions that:

> Comments are not solicited at this time regarding broader behind-the-meter issues that are beyond the scope of a clarification of the 2017 target. As the Commission noted in the CES Order at page 81, at the time the current net energy metering (NEM) compensation mechanism moves to a LMP+D approach based on a more precise determination of the value of distributed energy resources, it will be

[3] As noted in the CES Order, at the time the current net energy metering (NEM) compensation mechanism moves to a LMP+D approach based on a more precise determination of the value of distributed energy resources, it will be appropriate to revisit the question of how behind-the-meter resources should be considered. Also, as the Commission noted in the CES Order customer participation in the voluntary market and the question of a customer's ability to claim attributes associated with its voluntary projects are issues that are appropriate for further consideration by the Commission, in addition to and informed by the resolution of the transition of behind-the-meter resources from NEM to an LMP+D approach.

> appropriate to revisit the question of how behind-the-meter resources should be considered. Also, as the Commission noted in the CES order at page 89, customer participation in the voluntary market and the question of a customer's ability to claim attributes associated with its voluntary projects are issues that are appropriate for further consideration by the Commission, in addition to and informed by the resolution of the transition of behind-the-meter resources from NEM to an LMP+D approach. [Notice, pp. 2-3.]

As stated in the Notice, NYSERDA's petition is being treated as a motion for clarification pursuant to 16 NYCRR §3.6 and such clarification is provided below.

The CES Order distinguishes between LSE obligations to acquire RECs (or make Alternative Compliance Payments) to meet annual target obligations or mandates and the State's goal that 50% of the electricity consumed in New York by 2030 be from renewable resources. The new renewable resources from NY-Sun and other Customer-Sited Tier projects are to be counted towards the overall goal however such resources were not to be included in amount of renewable energy the LSEs are mandated to procure in 2017.

The Commission clarifies that the calculation of the 2017 LSE target of 0.6% in the CES Order did not identify that the majority of that number represents resources that contribute towards the overall Statewide goal without further action by the LSEs, and not the "mandate" target. The LSE obligation to purchase RECs for 2017 relates, in total, only to the estimated number of RECs from renewable energy projects that were not in operation prior to January 1, 2015 that will be available to NYSERDA for sale to LSEs during 2017. It should be further noted that the 21,000 MWh of available RECs stated in the September 12, 2016 Notice was a NYSERDA estimate as of the date of the CES Order, and that the CES Order requires NYSERDA to publish on its website the actual quantity of RECs NYSERDA expects to have available for sale during the 2017 compliance period by December 1, 2016. On November 1, 2016, NYSERDA made an early filing in this proceeding of its estimate. NYSERDA now estimates that it will have 56,142 MWhs of RECs available for sale during the 2017 compliance period. That equates to a target mandate of 0.035% of load for 2017. The Commission therefore hereby clarifies that the LSE mandate for 2017 is 0.035% of the total load served by each LSE for 2017.

It should be understood that this clarification is not a change in result. The target mandate for 2017 is a function of what resources will be available in that year given that the CES Order was adopted on August 1, 2016 and significant lead time will be necessary to solicit and construct new resources. During the early years of the CES, significant progress towards the goal will be made by new NY-Sun and Customer-Sited Tier resources coming on line, to be shortly eclipsed in quantity by new large-scale renewable resources that will become available. It should also be noted that the CES Order at pages 91-92, with more clarity, directs Staff as part of the implementation process to review, confirm or propose modifications to the 2018-2012 targets. As part of that process, Staff should similarly parse out the difference in those targets between resources that contribute towards the overall Statewide goal without further action by the LSEs and the resources that are intended to be acquired as a new mandatory obligation.

The Commission orders:

1. Clarification to the August 1, 2016 Order Adopting a Clean Energy Standard (CES Order) is hereby provided as described in the body of this order. The LSE obligation to purchase RECs for 2017 relates in total only to the estimated

number of RECs from renewable energy projects that were not in operation as of January 1, 2015 that will be available to NYSERDA for sale to LSEs during 2017 and the new renewable resources from NY-Sun and other Customer-Sited Tier projects are to be counted towards the overall goal, but are not considered part of the LSE mandate.

2. This proceeding is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

Commissioner Diane X. Burman, concurring:

As reflected in my comments made at the November 17, 2016 session, I concur on this item.