

**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

**COMMENTS OF THE CITY OF NEW YORK
ON CES PHASE 3 IMPLEMENTATION PLAN PROPOSAL**

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PRELIMINARY STATEMENT

The City of New York (“City”) has consistently supported the State’s Clean Energy Standard (“CES”) as it is complementary to the City’s objectives of creating a resilient and low-carbon energy supply, improving air quality, and reducing greenhouse gas emissions 80 percent below a 2005 baseline by 2050 (“80x50”).¹ Achievement of the CES goal of 50 percent renewables by 2030 will be a good start toward the broader 80x50 goal. Therefore, it is important that the CES be designed and implemented in a manner that maximizes the likelihood of its success.

The City generally supports the recommendations outlined in the CES Phase 3 Implementation Plan Proposal but respectfully submits that some improvements to it should be made.² Specifically, the City recommends that: (i) the proposed Tier 1 eligibility certification process for distributed energy resources (“DER”) should include an appeals process to ensure accuracy; (ii) the Tier 1 procurements should match the load-serving entities’ (“LSE”) load obligations; and (iii) the prices for prior vintages of renewable energy credits (“RECs”) should not be reduced because consumers remain liable for all costs not recovered via the REC sales.

¹ *One New York: The Plan for a Strong and Just City* (issued April 2015) at 166; available at <http://nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf>.

² Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, CES Phase 3 Implementation Plan Proposal (filed July 27, 2018) (“Phase 3 Plan”), p. 5.

COMMENTS

POINT I

THERE SHOULD BE AN APPEALS PROCESS FOR PROJECTS NOT CERTIFIED FOR TIER 1 ELIGIBILITY

Presently, DER projects must apply to the New York State Energy Research and Development Authority (“NYSERDA”) for Tier 1 eligibility. This process was created pursuant to the Public Service Commission’s (“Commission”) instructions that NYSEDA maximize the simplicity and robustness of the certification process.³

The Phase 3 Plan discusses modifying and automating the process by using information maintained by the utilities as part of the Standardized Interconnection Requirements Inventory (“SIR Inventory”) to determine Tier 1 eligibility.⁴ Under the new approach, projects no longer would be required apply individually to NYSEDA. While this approach has conceptual merit, there are practical concerns with it.

The SIR Inventory is still being developed, and it appears that all DER projects that could qualify for Tier 1 RECs may not be included in the Inventory. Also, DER projects may not yet have reportable metering types. Unless and until there is very high confidence in the accuracy and completeness of the SIR Inventory, it should not be the sole basis for determining Tier 1 eligibility. At a minimum, developers should be permitted to continue to contact NYSEDA directly to seek Tier 1 eligibility. Additionally, there should be some type of appeal process to provide recourse for developers whose projects are not included in the Inventory but arguably should be.

Under the new approach, DER developers no longer would have direct interactions with NYSEDA – the utilities will be the conduit between developers and NYSEDA. Errors

³ *Id.*

⁴ *Id.*

occasionally occur, including, but not limited to, incorrectly entering a project's in-service date, fuel type, nameplate capacity, or classification as Tier-1 eligible. Eligible projects should not be inadvertently excluded from participating in the 50x30 effort and then have no ability to correct the error. However, under the proposed process there is no ability for a developer to seek to modify the SIR Inventory to add a project that was erroneously excluded by a utility.

Allowing developers to continue to seek Tier 1 eligibility determinations directly from NYSERDA if their projects are excluded from the SIR Inventory is one option for ensuring the utilities are not the final arbiters of Tier 1 eligibility, and for ensuring that all eligible projects are granted Tier 1 status. Establishing an appeals process for projects excluded by the utilities would be a second reasonable option to address these concerns. Under such a process, a developer would be able to petition either the Interconnection Policy Working Group, the agency Staff person responsible for overseeing the SIR Inventory, or the Commission for inclusion on the SIR Inventory.

The City respectfully submits that this proposal comports with the Commission's directive to simplify and streamline the process while ensuring that developers are accorded some ability to protect and advance their rights. There should be a relatively small need for this process, so it should not create a material administrative burden for NYSERDA, the Department, or the Commission. While the need is small, it is important to the integrity of the process and the advancement of the Commission's policy agenda and goals that developers have the right to ensure that their projects are treated fairly and appropriately. Moreover, the ability to seek recourse, including a right to appeal, ensures that there continues to be appropriate oversight over the utilities' actions and should make the certification process more robust.

POINT II

THE COMMISSION SHOULD REQUIRE THAT TIER ONE PROCUREMENTS MATCH LSE OBLIGATIONS

NYSERDA has accumulated a significant backlog of banked vintage Tier 1 RECs that are due to expire at the end of this compliance year. The existence of this backlog suggests that there is a mismatch between the REC procurements and the LSE demand for RECs. NYSERDA's proposed solution to this mismatch is to reduce the price of the vintage RECs and attempt to sell them before they expire.⁵ However, the Phase 3 Plan does not contain a clear justification for this proposal or discuss how this proposal would be in ratepayers' best interests.

This proposal raises a number of concerns. First, the existence of the excess RECs indicates that the annual percentages of load that must come from renewable resources are too low. Second, if the percentages are not deemed to be too low, the excess indicates that NYSERDA is over-procuring RECs and ratepayers potentially are bearing these additional costs. Third, the proposal would not benefit consumers because it does not take into account that under the Financial Backstop Mechanism approved by the Commission,⁶ NYSERDA is able to recover the costs of unsold RECs from the utilities, who in turn recover those costs from ratepayers.⁷ If NYSERDA sells RECs to LSEs (the costs of which are passed through to the LSEs' ratepayers) at a discounted price, it would create a revenue shortfall (*i.e.*, the sales of RECs do not produce sufficient revenues to cover the costs incurred by NYSERDA in procuring the RECs) that it would then recover from

⁵ *Id.* at p. 8.

⁶ Case 15-E-0302, *supra*, Order Approving Administrative Cost Recovery, Standardized Agreements And Backstop Principles (issued November 17, 2016), p. 15.

⁷ This concern is addressed separately in Point III, below.

the same body of ratepayers, and ratepayers end up paying the same total amount to NYSERDA. In other words, selling the RECs at a discount would not result in savings for consumers.

The Phase 3 Plan does not address the fundamental issue regarding the current mismatch between supply and demand for RECs. For this reason, the Commission should direct NYSERDA to evaluate why LSEs are not buying all of the RECs it procures and identify steps it can take prospectively to bring the supply of and demand for RECs back into balance. Additionally, the Commission should direct NYSERDA to provide an explanation as to how its proposal to sell RECs at a discount would be in ratepayers' best interests. The Commission also could take steps to increase the demand for RECs.

The City respectfully submits that the first two recommendations should be adopted to increase transparency in the process and provide more clarity and accountability regarding NYSERDA's actions in procuring RECs. The third recommendation should be adopted because it is in furtherance of achievement of the State's public policy goals of relying to a greater extent on renewable resources, improving air quality, and reducing greenhouse gas emissions is to increase the annual levels of LSE purchase obligations. The current obligations – 0.15% for 2018 and 0.78% for 2019⁸ – are arguably too low to place the State on an appropriate trajectory to achieving the 50x30 goal.

Consumers/ratepayers are required to cover all of NYSERDA's REC procurement costs. The fact that NYSERDA has excess RECs means that NYSERDA has procured more RECs than are needed to comply with the CES requirements.⁹ NYSERDA is continuing to procure RECs,

⁸ Phase 3 Plan, p. 4.

⁹ A contrary inference is that LSEs are not procuring sufficient quantities of RECs. However, their failure to do so would result in violations of the CES Order and subject them to penalties under Public Service Law §§ 25 and 25-a. Accordingly, the City does not believe that this is

which could result in the excess continuing (and perhaps increasing). Regardless of whether the additional RECs are needed, the costs of such procurements will be passed along to consumers. If the Commission were to increase the REC purchase requirement to match the quantity of RECs NYSERDA already has procured and already is planning to procure, there would be no excess RECs, and consumers would pay the same total amount and there would not be any incremental costs.¹⁰

The issue of over-procurement, and the Phase 3 Plan's failure to address this core problem, raises a separate concern. The Commission has a statutory obligation to ensure that rates are just and reasonable.¹¹ Requiring ratepayers to pay for RECs that are not needed arguably results in rates that are unjust and unreasonable. There is no discussion in the Phase 3 Plan of any steps to prevent the over-procurement from recurring, nor is there any explanation as to why NYSERDA procured more RECs than are needed to satisfy the LSEs' REC purchase requirements. Under the Financial Backstop Mechanism, ratepayers are obligated to cover all of NYSERDA's losses (*i.e.*, all amounts not covered by the sale of RECs). Reducing the REC price will not reduce ratepayers' total costs or make unjust rates just. This concern further demonstrates why the core problem needs to be addressed, rather than simply adjusting the price of vintage RECs.

In sum, the City respectfully requests that the Commission investigate the reasons for the overprocurement, direct NYSERDA to take steps to avoid exacerbating the problem, and adopt a solution that is consistent with achieving the goals of the CES.

the reason for the excess. The lack of any explanation for the excess goes to the need for the evaluation the City is recommending.

¹⁰ To be clear, if the Commission increases the purchase requirement beyond the level of procurements NYSERDA has already planned, there would be incremental costs to consumers to meet the higher targets.

¹¹ Public Service Law § 65(1).

POINT III

REDUCING THE PRICE OF VINTAGE RECS WILL NOT BENEFIT CONSUMERS

As noted above, NYSERDA proposes to reduce the price of about-to-expire RECs to clear its excess inventory. Beyond that, however, the Phase 3 Plan does not discuss the amounts that would be unrecovered since the sale price would be lower than the procurement price, nor does it provide any details on how the reduced price would be determined. Compounding these concerns, NYSERDA is seeking to eliminate Commission oversight of this matter. The City has several concerns with this proposal.

First, the REC prices are set to recover the costs NYSERDA incurs in procuring the RECs. If the prices are reduced, it is fair to assume that NYSERDA would not fully recover its costs. Under the Financial Backstop Mechanism, this differential is paid by utility ratepayers, not absorbed by NYSERDA. Therefore, there is no net benefit resulting from reducing the REC prices. That is, consumers would pay the same total amount, but in two ways rather than one. If there are no net benefits from reducing the price, it should not be reduced.

Second, the Commission has set annual REC purchase obligations on all LSEs. Since LSEs are required to comply with Commission orders, they presumably are purchasing the amount of RECs they are required to purchase. Importantly, as a general matter, the Commission did not condition the purchase requirement on the price of the RECs. Given these circumstances, it is questionable whether reducing the REC prices will result in additional REC purchases, and the Phase 3 Plan provides no evidence or indication that there exists a market for lower-priced RECs, or that lowering the prices will cause the excess RECs to be sold.

Third, NYSERDA wants to proceed without any continuing Commission oversight. The obligation to ensure that rates are just and reasonable rests with the Commission. While the

Commission may delegate its duties and responsibilities, it is required to set clear parameters when doing so.¹² The Commission has already prescribed standards to govern the manner in which NYSERDA sets REC prices.¹³ Here, in the event the Commission does allow NYSERDA to reduce the REC prices, it should not give NYSERDA unfettered discretion in doing so. Rather, the Commission should set standards or guidelines governing the manner in which prices are reset to ensure that there is a rational basis for any reduced price.

¹² *Suffolk County Builders Association v. County of Suffolk*, 46 N.Y.2d 613, 620 (1979).

¹³ Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (issued August 1, 2016), p. 108.

CONCLUSION

The Commission is pursuing an important public policy goal in encouraging greater reliance on renewable resources. However, the Commission needs to continue to balance costs and benefits and ensure that rates remain just and reasonable. Procuring excess quantities of RECs, and then reducing the price of those RECs in order to dispose of them, is not an appropriate approach. The City respectfully urges the Commission to investigate the reason(s) for the overprocurement and take steps to avoid its recurrence, including, as appropriate, increasing the LSEs' REC purchase requirements. Reducing the prices of vintage RECs, as proposed by NYSERDA, will not address the real problem, and it will not reduce ratepayers' overall costs. Accordingly, the CES Phase 3 Implementation Plan should be modified as discussed herein.

Respectfully submitted,

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