

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

Case 15-E-0302

**In the Matter of the Value of Distributed Energy
Resources**

Case 15-E-0751

**COMMENTS OF THE CITY OF NEW YORK
ON THE JOINT UTILITIES' PETITION FOR CLARIFICATION
REGARDING ORDER APPROVING PHASE 2 IMPLEMENTATION
PLAN IN CLEAN ENERGY STANDARD PROCEEDING**

Dated May 21, 2018

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PRELIMINARY STATEMENT

The City of New York (“City”) hereby submits these comments in response to the Joint Utilities’ (“JU”) Petition,¹ which requests that the Public Service Commission (“Commission”) relax the restrictions on renewable energy credit (“REC”) transferability and bankability with respect to RECs generated in excess of Clean Energy Standard (“CES”) load serving entity (“LSE”) compliance requirements. The City respectfully requests that the Commission: (i) verify the JU’s REC overage projections prior to ruling on the Petition; (ii) assuming the JU projections can be verified, enact measures to ensure that the Petition does not disincentivize renewable development in Consolidated Edison Company of New York, Inc.’s (“Con Edison”) service territory; and (iii) assuming modifications to the LSE’s REC-handling rules are made, modify customer options with regard to customer-retained RECs from Value Stack projects.

COMMENTS

POINT I

THE COMMISSION MUST VERIFY THAT THE JU FORECASTED REC OVERAGES ARE ACCURATE

While the City appreciates the JU’s concerns regarding the potential cost impacts of REC overages on customers, it is apprehensive that the requested changes to the REC transferability and bankability rules may be premature. At a minimum, any changes must be postponed until the utilities can more accurately forecast whether, and to what extent, the interplay between the Value of Distributed Energy Resources (“VDER”) tariff and the CES will result in REC overages that cannot be adequately managed under existing rules.

¹ Case 15-E-0302, et al., Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and Clean Energy Standard, Joint Utilities’ Petition for Clarification Regarding Order Approving Phase 2 Implementation Plan in Clean Energy Standard Proceeding (filed December 18, 2017) (“Petition”).

The REC overages put forth by the Petition are very high, ranging from 33,080 in Orange and Rockland's territory to 145,532 in New York State Electric and Gas Corporation's ("NYSEG") territory.² According to the JU, these projected overages are driven primarily by the anticipated projects coming online under the VDER tariffs. However, having only just concluded the first quarter of the year, it is difficult to know whether the utilities' overage concerns will come to fruition, particularly considering that distributed energy resource ("DER") project construction can be delayed for any number of reasons, including local moratoria, land use issues, interconnection issues, and difficulties with financiers. Thus, at this stage in 2018, it is unclear whether the JUs' estimated REC amounts from VDER projects will materialize in the manner forecasted in the Petition.³ Further, LSE REC compliance targets are set to increase annually, potentially lessening overage amounts in future years. For example, by 2020, the LSE Tier 1 obligation will have increased from 0.15% to 2.84%.⁴ Assuming the VDER RECs remain constant, this increase in the Tier I obligation would decrease Orange and Rockland's overage from 33,080 to 1,741 RECs and NYSEG's overage from 145,532 to 7,660 RECs. These are substantial reductions to projected overages, and the Petition does not explain whether modifications to REC transferability and bankability are needed at these reduced overage levels.⁵

² Petition at p. 4. These overages are forecasted for calendar year 2018.

³ The Petition was filed over four months ago so, at a minimum, the JU should provide an update on the number of RECs anticipated from VDER projects in 2018, 2019, and 2020.

⁴ Case 15-E-0302, supra, Order Approving Phase 2 Implementation Plan (issued November 17, 2017), at p. 4 ("Phase 2 Implementation Order").

⁵ It bears reminding that similar exceedance concerns were raised in recent years regarding net metering capacity thresholds based principally on the size of the interconnection queues (which in part precipitated the VDER proceeding), only to see a significant portion of the utility queue disappear once firmer payment deadlines were enacted. This reinforces the need to verify JU claims on anticipated REC overages.

Thus, the City encourages the Commission to verify the JU's projections before making material changes to the REC markets based on potentially inflated JU projections regarding DER projects. The changes suggested by the JU should only be considered if/when the Commission is able to validate the JU's projections of REC additions from VDER projects in each service territory. The Commission must also verify that the passage of time will not obviate the need for the relief in the Petition, either through increasing CES targets, project delay/attrition, or both.

POINT II

ASSUMING JU REC PROJECTIONS CAN BE VERIFIED, THE COMMISSION MUST GUARD AGAINST DISINCENTIVIZING INCREMENTAL CLEAN ENERGY DEVELOPMENT

To allow its residents to benefit from the local benefits of clean energy, the City has been actively exploring mechanisms to encourage greater proliferation of clean energy project development for several years. If the Commission were to grant the relief requested by the Petition and change the transferability and bankability of RECs, it runs the risk of disincentivizing incremental renewable development in New York State, particularly in Con Edison's territory where developers face space constraints and high real estate and construction costs. The Commission must take appropriate steps to guard against such disincentive.

Under the CES, LSEs must meet their annual REC compliance obligations by purchasing RECs or by making Alternative Compliance Payments ("ACPs").⁶ As each REC is demonstrative of one renewable MWh generated by a facility,⁷ the compliance obligations incent LSEs to seek incremental renewable development, particularly because the price of the ACPs is generally higher than the REC procurement price. However, if a REC deficient utility such as

⁶ Case 15-E-0302, supra, Order Adopting a Clean Energy Standard (issued August 1, 2016) at p. 16 ("CES Order").

⁷ Id. at p. 106.

Con Edison is given the option to merely buy additional RECs from a utility with a REC surplus, it may be less likely to expend its efforts pursuing incremental renewable energy development. In other words, Con Edison may find it easier to simply purchase RECs generated by pre-existing VDER projects, which are currently being developed irrespective of any efforts of Con Edison.

Discouraging Con Edison and other LSEs from pursuing incremental renewable generation would undercut the State's ambitious 50 x 30⁸ goal, the City's parallel 80 x 50⁹ goal, and the City's interest in additional installed renewable capacity downstate. Indeed, recent data on utility interconnection queues show the relative disparity of new DER in Con Edison's territory as compared to others. For example, as of May 1, 2018, NYSEG had allocated all of its Tranche 1 and 2 capacity and had only 30 MW of its assigned 77 MW in Tranche 3 remaining, while Con Edison had allocated only 7.1 MW of its 136 MW Tranche 0/1 allocation.¹⁰ Any REC market changes must not exacerbate this disparity, which would only serve to hinder the ability of the State and City to achieve their clean energy goals.

On a going forward basis, the Commission has several options for mitigating against this disincentive. For example, assuming the REC overages are verified, the Commission could approve REC transfers on a limited basis, to sunset once CES targets are reset. At that time, in the event of REC overages, the Commission can revise future compliance obligations to create more accurate and realistic targets that minimize any surpluses, which is consistent with the

⁸ See *Id.* at p. 2.

⁹ See *One New York: The Plan for a Strong and Just City* (issued April, 2015) at p. 166, available at: <http://www.nyc.gov/html/onenyc/downloads/onepublications/OneNYC.pdf>.

¹⁰ See VDER RESOURCES, NYSERDA (April 1, 2018), available at <https://www.nyseda.ny.gov/vder>.

City's prior CES comments calling for reasonable LSE compliance targets.¹¹ Moreover, the targets should be set for each utility, such that service territories that are more likely to add significantly to REC procurement via interconnected DERs, such as NYSEG, would have higher targets than those that do not (for example, Con Edison) instead of applying a uniform load target of 0.15% for all LSEs, as was done for 2018.¹² These common sense measures can guard against creating further disincentives to incremental DER development both within Con Edison's territory and statewide, and should be adopted in the event that the Commission grants the relief requested in the Petition.

POINT III

IF THE COMMISSION REVISES REC HANDLING RULES FOR LSES, IT SHOULD ALSO DO SO FOR CUSTOMERS

If utility options for REC disposition are expanded, the Commission should also improve the liquidity of customer-retained RECs. Under the VDER Order, customers that elect to retain the RECs from VDER-eligible projects receive non-transferrable certificates that are not Tier 1 eligible and have no independent monetary value.¹³ Throughout the VDER proceeding, several parties, including the City, have expressed concerns over the Commission's treatment of customer-retained RECs. The Commission is now being asked to provide LSEs with more flexibility on REC transfers for RECs held by the LSEs. Should the Commission determine that LSEs are to be given greater latitude with regard to REC handling, fairness and equity require that similar modifications be made for customers.

¹¹ Case 15-E-0302, *supra*, Comments of the City of New York on Staff's Clean Energy Standard White Paper (filed April 22, 2016), at p. 11.

¹² Phase 2 Implementation Order at p. 4.

¹³ Case 15-E-0751, et al., In the Matter of the Value of Distributed Energy Resources, Order on Net Energy Metering Transition, Phase One Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) at p. 66 ("VDER Order").

The City specifically recommends that customers who elect to retain RECs from VDER-eligible projects should be given fully transferrable Tier 1 RECs. In doing so, the Commission would correct the unnecessarily disparate treatment currently applied to VDER customers, while also advancing the State's clean energy goals by encouraging voluntary REC markets.

CONCLUSION

While the City appreciates the JU’s concerns about the potential for REC overages to cause customer costs to rise, it respectfully requests that the Commission postpone any action until the JU projections on REC overages can be adequately verified. Assuming these projections can be verified and the Commission determines that changes to REC-handling rules are necessary, the City recommends that the Commission (i) adopt the mitigative measures outlined herein to ensure it does not inadvertently disincentivize renewable development in Con Edison’s territory and (ii) revise the rules for customer-retained RECs generated by VDER projects such that customers are provided fully transferrable Tier 1 RECs.

Respectfully submitted,

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