



October 22, 2018

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

Dear Secretary Burgess:

Pursuant to the Notice published in the August 22, 2018 edition of the *New York State Register* (I.D. No. PSC-34-18-00014-P), Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments on the Clean Energy Standard (“CES”) *Phase 3 Implementation Plan Proposal* (“Phase 3 Proposal”), issued jointly by the New York State Energy Research and Development Authority (“NYSERDA”) and Department of Public Service Staff (“Staff”) on July 30, 2018. Multiple Intervenors also provides comments on the *Zero Emissions Credit (ZEC) Implementation Plan* (“ZEC Proposal”) issued by NYSEDA and Staff on August 3, 2018 in this proceeding.¹

Throughout this proceeding, Multiple Intervenors has advanced concerns regarding the cost impacts of the CES, and has urged the Public Service Commission (“Commission”) to take care that, in establishing policies and in furtherance of the State’s clean energy goals, customers (and, in particular, price-sensitive, energy-intensive customers) are not burdened unduly with excessive and/or unnecessary costs. Multiple Intervenors’ concerns equally are pertinent to the implementation, by NYSEDA, of the Renewable Energy Standard (“RES”) and Zero Emissions Credit (“ZEC”) components of the CES. At all times, NYSEDA’s implementation of the RES and ZEC programs should be effectuated in such a manner that does not force captive customers to pay more than necessary.

Based on its review of the Phase 3 Proposal and the ZEC Proposal, Multiple Intervenors have identified several issues and concerns regarding those proposals, including recommendations

¹ Notice of the ZEC Proposal was not published in the New York State Register. That omission notwithstanding, Multiple Intervenors has significant concerns with the ZEC Proposal that warrant discussion herein to ensure that the Commission has the benefit of a full and complete record prior to issuing any decision with respect thereto.

to: (1) modify the RES program to allow NYSERDA to sell older-vintage Renewable Energy Credits (“RECs”) at a reduced price; and (2) modify the methodology by which load-serving entities (“LSEs”) pay NYSERDA for ZECs, significantly, by including a new penalty structure as part of the ZEC program. As explained below, these proposals potentially could create additional, unnecessary costs for customers who already are paying substantial amounts to fund the programs, and, therefore, should be scrutinized in greater detail prior to being acted on by the Commission. Importantly, Multiple Intervenors’ decision to provide feedback on selected components of the Phase 3 Proposal and the ZEC Proposal should not be construed either as support for or opposition to other components of those proposals.

1. Phase 3 Proposal

Under the CES, NYSERDA is tasked with procuring RECs from eligible generators, and then reselling those RECs to LSEs to fulfill their annual RES obligations. Currently, NYSERDA is allowed to bank, for up to two years past their vintage year, any RECs that were not purchased by LSEs. After those two years, the banked, unsold RECs expire. In order to ensure that it can sell-off accumulated Tier 1 RECs to LSEs, NYSERDA now proposes, *inter alia*, that it be allowed to reduce the sale price for banked Tier 1 RECs that are scheduled to expire after the end of the current compliance year.

Multiple Intervenors has several potential concerns about this proposal. First, the Phase 3 Proposal suggests that the proposed modification to the pricing of older-vintage RECs is needed in order for NYSERDA to sell-off its inventory of 2017 vintage Tier 1 RECs by the end of the 2019 compliance period. The Phase 3 Proposal is unclear as to whether reducing the price of expiring RECs is expected to be a one-time occurrence to clear NYSERDA’s inventory of 2017-vintage RECs, or whether NYSERDA expects to accumulate excess RECs each year of the RES program that subsequently have to be sold off at a reduced price.² The latter suggests a possible mismatch between the annual REC obligations for LSEs, and the number of RECs that NYSERDA actually procures for that purpose.

To the extent possible, the Commission should ensure that LSEs (and their captive customers) only are paying for the RECs that actually are needed to meet State clean energy goals, and that NYSERDA is not accruing more RECs than necessary. Possible solutions include, but may not be limited to, directing NYSERDA to scale-back its quarterly REC solicitations such that it only is procuring an amount of RECs actually necessary for LSEs to meet their respective obligations. Alternatively, the Commission could eliminate the two-year expiration date for RECs, thereby eliminating the need to sell RECs at a reduced price in the future.

Second, the Phase 3 Proposal states that “NYSERDA will consult with Staff to determine the pricing of the expiring Tier 1 RECs before they are offered for sale at a reduced price.” (Phase 3 Proposal at 8). Significantly, however, the Phase 3 Proposal otherwise is silent on how NYSERDA actually would set the reduced price for expiring RECs. Nor is there any indication that such a methodology devised by NYSERDA would first be available for public scrutiny prior

² It is not clear from the Phase 3 Proposal how many expiring RECs NYSERDA currently has in its possession. That information was omitted from the document.

to the Commission adopting it. At a minimum, if the Commission determines that NYSERDA should be allowed to reduce the price of expiring RECs, it should concurrently direct NYSERDA to file a proposed pricing methodology that would be subject to the public comment process.

Third, Multiple Intervenors is concerned that selling off accrued, expiring RECs at a reduced price could result in cash flow issues for NYSERDA because it presumably purchased those RECs at full price from qualifying generators. This in turn potentially could implicate the Commission-approved financial backstop mechanism whereby, if NYSERDA has insufficient cash to pay contracted generators for their clean energy attributes, the utilities (and, by extension, their captive customers) would be forced to cover any shortfall. Multiple Intervenors is opposed to any actions that could accelerate the need to invoke the financial backstop mechanism – as its name implies, the backstop mechanism is designed as a “last resort” to resolve cash flow issues, and the Commission should not approve a pricing methodology that actually creates those issues in the first place. The Commission should require NYSERDA and Staff to demonstrate, with compelling evidence, that any proposed methodology to sell expiring RECs at a reduced price would not result in cash flow issues for NYSERDA, and would not otherwise result in additional customer payments.

The above concerns notwithstanding, Multiple Intervenors also recognizes that by selling RECs at a reduced price, NYSERDA could at least mitigate customer exposure by deriving some value from those RECs (albeit at a discounted price) as opposed to risk getting nothing for them once they expire. As noted above, one possible option to avoid future customer risk is to eliminate the two-year expiration date and allow RECs to be rolled-over indefinitely such that they presumably would eventually be purchased by LSEs. Such approach also would enable the Commission and/or NYSERDA to adjust future procurements to account for surplus RECs, if any. However, if the Commission determines that the two-year expiration date for RECs cannot be eliminated, then Multiple Intervenors agrees that selling expiring RECs for some value is preferable to letting them expire for no value, provided that such a sale is for a reasonable price and does not result in customer harm.

For all the foregoing reasons, Multiple Intervenors respectfully urges the Commission to carefully review this component of the Phase 3 Proposal in detail to ensure that it does not unnecessarily harm customers. It may be that NYSERDA simply is over-procuring RECs and needs to monitor and adjust its procurements accordingly.

2. ZEC Proposal

In the ZEC Proposal, NYSERDA and Staff propose a new methodology whereby, each month, an LSE would use a best estimate of its wholesale load for the prior month to calculate its ZEC obligation payment to NYSERDA. LSEs either would have the option of using their own load data estimates, or estimates provided by the New York Independent System Operator, Inc. (“NYISO”). The monthly estimates then would be subject to a true-up mechanism to ensure that an LSE’s ZEC payments match up with its actual load. Significantly, however, the ZEC Proposal recommends that, if an LSE’s aggregated estimated load for any quarter is less than 85% of its actual load for that quarter, as calculated by the NYISO, the LSE would be subject to a penalty equal to the greater of (1) 15% of the difference, or (2) \$1,000.

Multiple Intervenors opposes the proposed penalty structure for a number of reasons. First, NYSERDA and Staff have not offered any justification for why a penalty structure even is necessary or appropriate. The ZEC Proposal states that “NYSERDA must ensure that it collects the funds necessary to meet its obligation to purchase ZECs [from eligible Upstate nuclear generators].” (ZEC Proposal at 5). However, as noted above, there already is a financial backstop mechanism in place to ensure that NYSERDA has the necessary cash to pay generators for their clean energy attributes. In other words, to the extent that a monthly “pay-as-you-go” approach for the ZEC program creates cash flow issues, a mechanism already is in place that requires customers cover cash shortfalls, and the proposed penalty structure therefore is redundant.³

Moreover, the ZEC Proposal already recommends that, if an LSE’s quarterly estimated load is less than 90% of its actual load for that quarter, the LSE must make-up the shortfall within 15 days of being notified by NYSERDA. (ZEC Proposal at 6). In other words, LSEs that have underpaid already would be required to eliminate that shortfall in a relatively short time span. In addition, the ZEC Proposal recommends that the minimum penalty for any discrepancy between estimated and actual quarterly load be set at \$1,000. Considering that the ZEC program already requires customer payments that collectively amount in the tens of millions of dollars per year, it is unclear how small amounts collected through the proposed penalty mechanism would meaningfully affect NYSERDA’s ability to pay generators for ZECs in the first place.

Second, LSEs have the option of utilizing NYISO estimates to develop their estimated loads for ZEC payment purposes. As such, if that LSE’s quarterly estimated load actually is less than 85% of its actual load for that quarter, NYSERDA would, in effect, be penalizing the LSE for errors in the NYISO data. This strikes Multiple Intervenors as unreasonable and unfairly punitive, particularly if LSEs are allowed to pass-through ZEC-related penalty costs to their customers. That is, customers could be forced to pay penalties to NYSERDA for data errors that are beyond the control of the LSEs. The ZEC Proposal, as drafted, offers no protection to customers if their LSE receives a penalty.

Finally, there is no information in the ZEC Proposal about how collected penalty funds would be used (*e.g.*, to reduce ZEC-related costs for all LSEs). As noted above, there already are safeguards in place to ensure that NYSERDA has adequate funds to pay generators for their clean energy attributes. The Commission should not authorize a mechanism that essentially would provide NYSERDA with an additional source of CES-related revenue, at the expense of customers.

For all the foregoing reasons, the Commission should reject the penalty structure as proposed by NYSERDA and Staff. In the alternative, if the Commission approves the penalty structure, it also should direct NYSERDA to utilize any collected penalties to reduce the ZEC obligations of all LSEs, thereby reducing customer costs.

³ Again, as noted above, Multiple Intervenors opposes any proposals that would create or exacerbate cash flow issues that could implicate the financial backstop mechanism in the first place. The Commission should ensure that all proposed modifications to the RES program or the ZEC program are fully vetted, and that there is analysis available demonstrating that such modifications would not have negative cash flow implications.

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3. Conclusion

Multiple Intervenors appreciates this opportunity to provide feedback on the Phase 3 Proposal and the ZEC Proposal, and respectfully urges the Commission to adopt the recommendations set forth in these Comments.

Very truly yours,

MULTIPLE INTERVENORS

Justin J. Fung

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cc: Active Parties (via e-mail)

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