STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

REENERGY HOLDINGS LLC's PETITION FOR REHEARING

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I. INTRODUCTION

On August 1, 2016, the Public Service Commission (the "Commission") issued an order in the above-referenced proceeding approving various components of a Clean Energy Standard ("CES") program.[1] Consistent with the State Energy Plan's ("SEP") goals, the CES program seeks to accomplish 50% of New York's electricity generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030.[2] To this end, the CES Order adopts, among other things: obligations on load serving entities to financially support new renewable generation resources to serve their retail customers; a requirement for regular renewable energy credit ("REC") procurement solicitations; obligations on distribution utilities on behalf of all retail customers to continue to financially support the maintenance of certain existing at-risk small hydro, wind and biomass generation attributes; a program to maximize the value potential of new offshore wind resources; and obligations on load serving entities to financially support the preservation of existing at-risk nuclear zero-emissions attributes to serve their retail customers.

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[1] Case 14-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Issued August 1, 2016) (the "CES Order").
[2] *Id*. at 2.

ReEnergy Holdings LLC ("ReEnergy") supports the Commission's goals to improve New York's environment, public health, climate and economy. ReEnergy believes that in order to meet these goals, policy must be in place to support robust markets for renewable energy resources.

With respect to continued financial support for the maintenance of certain existing at-risk small hydro, wind and biomass generation attributes, the Commission rejected Tiers 2A and 2B, as proposed by Department of Public Service Staff ('Staff"), and decided instead to implement a maintenance program for such facilities, similar to the program that had been utilized for pre-2003 baseline resources under the Renewable Portfolio Standard ("RPS") program.

As discussed further herein, ReEnergy is the owner of two "at-risk" biomass baseline renewable facilities. Pursuant to Section 3.7[3] of the Commission's rules, and based on certain factual inaccuracies contained in the CES Order, ReEnergy hereby submits this petition for limited rehearing of the CES Order. ReEnergy believes that the Commission must create a more robust market for existing renewable energy resources in order to meet the SEP's ambitious goals.

[3] 16 NYCRR § 3.7.

II. BACKGROUND

ReEnergy, headquartered in Latham, New York, owns and operates electricity generation facilities fueled by biomass and other residual fuels to produce renewable energy in New York and Maine. ReEnergy's portfolio includes two biomass facilities in New York: the 60-megawatt ("MW") ReEnergy Black River facility at Fort Drum, near Watertown and the 22-MW ReEnergy Lyonsdale facility in Lewis County. Earlier this year, ReEnergy sold for scrap its idled 21-MW ReEnergy Chateaugay facility in Franklin County. ReEnergy's facilities have participated in the Main Tier of the RPS program (the Black River and Lyonsdale facilities) and as a maintenance resource (the Lyonsdale and Chateaugay facilities). ReEnergy's two remaining facilities in New York represent a combined nameplate capacity of 82 MW—enough electricity to serve 76,000 homes. When both facilities are operating, they purchase nearly $24 million of sustainably harvested fuel from local suppliers and support more than 500 direct and indirect jobs in New York. In the past five years, ReEnergy Holdings has invested more than $65 million in New York in electricity generation facilities powered by biomass. ReEnergy's Black River facility supports national security and the State's largest single-site employer, the U.S. Army installation Fort Drum, by providing 100% of Fort Drum's electricity through a behind-the-meter interconnection.

New York boasts plentiful land and forest resources. Expanding the sustainable management of these resources to produce homegrown biomass-derived energy stimulates economic activity and jobs within the State while displacing the use of imported fossil fuels with renewable energy. Thus, a thriving biomass sector produces many benefits by: creating new jobs and retaining existing ones, particularly in rural areas where biomass is produced and used; reducing greenhouse gas ("GHG") emissions, in furtherance of CES goals; strengthening the reliability of the electricity grid with continuous, baseload energy; enhancing forest health with sustainable harvesting practices; meeting the highest environmental standards with state-of-the-art technology; and advancing the State's energy independence.

In addition, biomass-power utilizes a lower-quality material than wood pellet manufacturing and pulp and paper facilities, optimizing harvesting operations and incrementally adding value to the forest products industry in the State. In fact, ReEnergy has achieved certification to the Sustainable Forestry Initiative Standard for its biomass power facilities in New York and Maine, becoming the first company solely devoted to electricity production to do so. Thus, ReEnergy's biomass procurement programs are promoting land stewardship and responsible forestry practices throughout the State.

III. ARGUMENT

Pursuant to the Commission's rules, "[r]ehearing may be sought only on the grounds that the commission committed an error of law or fact or that new circumstances warrant a different determination."[4] We believe the Commission has committed errors of law and fact and respectfully request that the Commission reconsider implementation of a Tier 2A program due to the circumstances discussed below.

In the White Paper, Staff proposed establishment of a Tier 2 to "support the substantial fleet of non-State owned or contracted renewable energy generators already in operation and

[4] 16 NYCRR § 3.7 (b).

available to meet New York's CES targets from within New York or adjacent control areas."[5] Staff further proposed to divide Tier 2 into two sub-tiers. Tier 2A, the Competitive Sub-Tier, was "intended to provide sufficient revenue to attract supply for which New York must compete with other states, and may be critical to keep all or most of the supply rolling off NYSERDA Main Tier projects from seeking higher revenues for provisions of RECS in neighboring markets."[6] Eligibility for Tier 2A would include RECs from merchant projects without current state support in New York and states within control areas adjacent to New York, RECs associated with expired NYSERDA RPS Main Tier contracts, and RECs associated with portions of projects with Main Tier contracts still in effect that are not purchased by NYSERDA.[7] ReEnergy was anticipating that its New York biomass power facilities would be eligible for Tier 2A status.

Tier 2B was intended "to provide sufficient revenue to maintain New York's renewable baseline which is not eligible for 'growth tier' RPS obligations in control areas adjacent to New York."[8] All other renewable supply not eligible for Tier 2A would fall under Tier 2B. The Commission's decision on existing renewable resources was not supported in the record and relied on two erroneous assumptions: that existing renewable resources do not have high going-forward costs and are not at imminent risk of exporting to other regions

In the CES Order, the Commission dramatically departed from Staff's proposals contained in the White Paper, opting instead to implement a maintenance program in a new single Tier 2 of the RES. ReEnergy believes that this dramatic shift was not supported by the record, as it was not discussed or presented in the course of the proceeding and was not

[5] Case 15-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Staff White Paper on Clean Energy Standard (Issued January 25, 2016), at 22.
[6] White Paper, at 23.
[7] *Id*.
[8] *Id*. at 23-24.

subject to stakeholder comment. ReEnergy also believes that the Order is unfair and discriminatory toward existing renewable projects.

The CES Order's determination with respect to Tiers 2A and 2B are wholly unsupported and based on erroneous factual findings. According to the Commission:

> "The facilities that Staff proposes 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 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. While it may be possible that some of these facilities will sell their clean energy attributes into other states, given vintage and delivery requirements in other states it remains merely hypothetical that there will be a mass flight of these resources. Therefore, at this time, there is no imminent risk of losing the emission attributes associated with these facilities permanently and no concomitant need to provide them with additional New York consumer support for those emission attributes. In the event that significant out-of-state sales occur to the detriment of the RES program, the Commission will reconsider the need to compete for these resources in one of the triennial reviews prior to 2030. The Tier 2a concept is not adopted."[9]

The Commission committed factual errors in two respects:

First, while the resources proposed for Tier 2A in Staff's White Paper includes many wind facilities, a material fraction of Tier 2A resources are biomass resources. For these resources, contrary to the CES Order, there are high going-forward operation and maintenance costs. These facilities are clearly not profitable under today's depressed market prices for energy and capacity. Therefore, the CES Order has made an assumption counter to the facts.

Second, with respect to Tier 2A resources, the Commission concludes in the CES Order that "there is no imminent risk of losing emission attributes associated with these facilities

[9] CES Order, at 116.

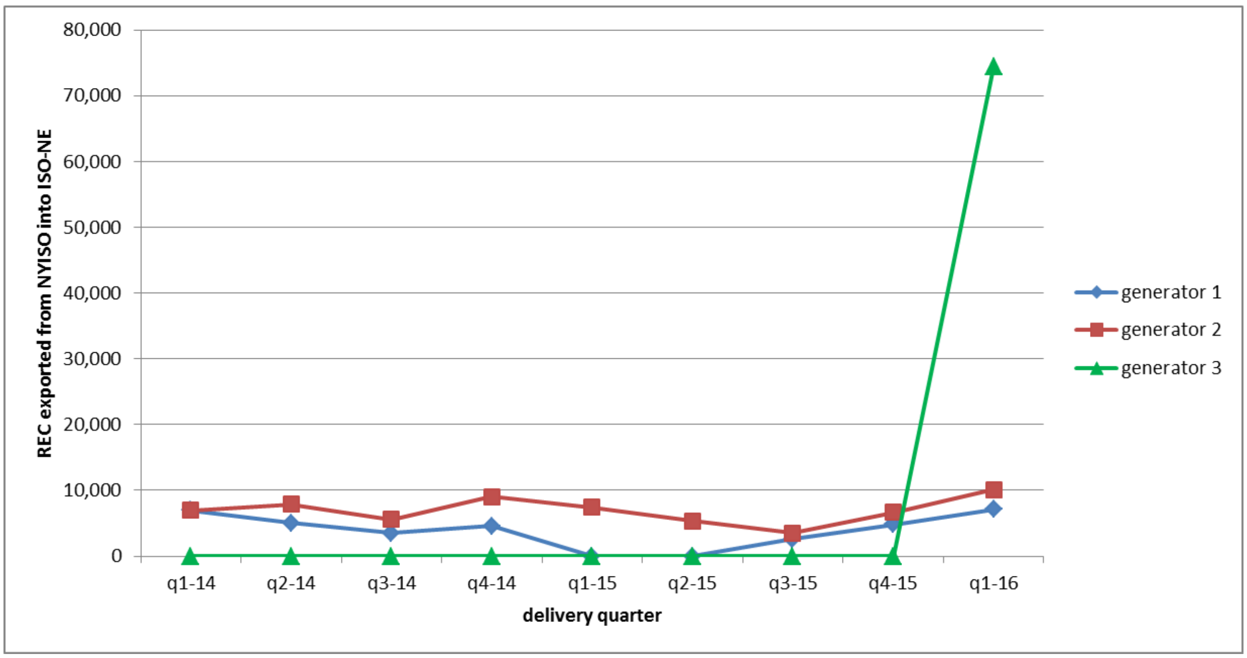
permanently."[10] On the contrary, these emission attributes are already being lost effective Q1-2016 with the very first facility that completed the term of its Main Tier agreement. The Maple Ridge Wind facility was selected in the First Main Tier Solicitation (RFP 916) with an expected online date of Jan 1, 2006. This was a ten-year contract for a maximum output of 605,820 MWh per year. Accordingly, the expectation is that this facility was able to market its renewable energy certificates on a merchant basis starting in Q1-2016.

The NEPOOL GIS is the tracking system for generation and imports into ISO-NE for the facilitation of REC trading and accounting. NEPOOL GIS lists both Maple Ridge I and Maple Ridge 2 Wind Farm as registered import generators. GIS does not publicly list REC imports by generator, but does publicly list REC imports by Import Account Holder. Notably, Import Account Holder Marble River, LLC has generally hosted either one or two generators for import into ISO-NE from NYISO during 2014-2015. Imports into ISO-NE for this period for the two generators in aggregate ranged from 5,000 to 14,000 RECs per quarter. There is a strong indication that the two generators importing over that time on the Marble River, LLC account are the Marble River, LLC generator (volumes in excess of their 6th Main Tier award) and the Madison Wind Power, LLC generator. Both generators are listed in NEPOOL GIS and both are owned by EDP Renewables LLC. In Q1-2016, for the first time, a third importing generator was added to this account holder import schedule. This third generator delivered 74,366 RECs for the quarter – substantially higher than seen previously for the other two generators. The magnitude of this increase is shown in Figure 1. Given that EDP Renewables is a joint owner of Maple Ridge and that, to our knowledge, EDP Renewables only has ownership interest in three

[10] CES Order, at 116.

operating wind projects in New York, there is little doubt that the Maple Ridge facility has already begun to export substantial volumes of RECs out of the state of New York now that its Main Tier Solicitation contract has terminated. Given that there is no market obligation for Load Serving Entities (LSEs) to procure these RECs in New York, it is very likely these exports will continue every quarter. Therefore there is compelling evidence that the Order was based on an assumption counter to the facts.

Figure 1



In the White Paper, Staff expressed concern about the fate of the 2,000 MW of Main Tier resources and additional MW of pre-2003 baseline generation, and the need to support the continued operation of these resources in order to preserve their economic and environmental benefits and to ensure that these MW contribute toward the state's CES goals. As noted above, the White Paper proposed a competitive tier for these legacy projects "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."[11]

Appendix D of the White Paper stated: "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."

Wholesale electricity market conditions that have affected the fleet of upstate nuclear facilities have had similar negative impacts on other clean energy projects, including biomass power projects. Some of those projects have become non-viable (e.g., ReEnergy Chateaugay) and have either terminated operations or are contemplating closure (e.g., ReEnergy Lyonsdale, which has been idled from time to time since May 2016 due to market conditions). As such, the CES program should include provisions to allow for the continued operation of not only the nuclear facilities but other clean energy facilities as well, particularly considering that these facilities support hundreds of direct and indirect jobs – many of them in the forest products industry – and provide fuel diversity benefits and support the state's compliance obligations under the Clean Power Plan.

If these existing resources have the capability to monetize their renewable attributes at a sufficient price within New York, the State will be able to maintain the substantial environmental benefits, economic benefits, and fuel diversity benefits while avoiding

[11] White Paper, at p. 5 of Appendix A

premature retirements and exports of renewable energy to other markets. The Order implies that all existing renewable energy resources will be able to be counted toward the 50% mandate but does not provide a mechanism to compensate those existing resources at a value that is competitive with adjacent markets. Therefore, there is no rationale to count these resources toward the 50% goal. This decision will create significant market disruption and harm progress toward the CES goals.

Many of the projects currently participating in the RPS program as Main Tier and Maintenance resources have substantial remaining life, and it would not be in the State's interest for the energy, RECs and capacity from some or all of these resources to leave the market or for these resources to terminate operations. If that were to occur, New York would lose the ability to claim that renewable energy supply toward its renewable energy goals, and the loss of those resources to premature retirements would lead to lost jobs and the loss of fuel diversity benefits.

III. CONCLUSION

For the foregoing reasons, ReEnergy respectfully requests that the Commission reconsider implementing Tier 2A as proposed by Staff in the White Paper.