



Case 15-E-0302

Clean Energy Standard

Phase 3 Implementation Plan Proposal

Filed by

Staff of the New York State Energy Research and Development Authority

and

Staff of the New York State Department of Public Service

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# 1. Introduction

On August 1, 2016, the Public Service Commission (Commission) issued its Order Adopting a Clean Energy Standard.<sup>1</sup> The Clean Energy Standard (CES) is consistent with the State Energy Plan goal that 50% of the electricity consumed by New Yorkers is to be generated by renewable energy sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030. The CES includes a Renewable Energy Standard (RES), a Zero-Emissions Credit (ZEC) requirement, and, as of July 12, 2018, an Offshore Wind Standard.<sup>2</sup>

The ZEC requirement consists of an obligation that LSEs purchase ZECs from the New York State Energy Research and Development Authority (NYSERDA) in amounts proportionate to their load served. The RES consists of an obligation on every load serving entity (LSE) to serve their retail customers by procuring new renewable resources, evidenced by the procurement of qualifying Tier 1 Renewable Energy Credits (RECs) or by making Alternative Compliance Payments (ACPs). The RES also includes a Tier 2 maintenance program to provide support to those “at risk” eligible facilities that have demonstrated that they are not economically viable without additional support. In March 2018, the Commission issued an Order continuing the basic structure of the Tier 2 maintenance program but including a new option for streamlined review and expanding its eligibility to resources in operation as of January 1, 2015 (previously January 1, 2013).<sup>3</sup> As part of the CES, the Commission also ordered NYSEDA to conduct periodic solicitations offering long term contracts for the purchase of RECs to support financing of new RES Tier 1-eligible facilities.

The CES Framework Order acknowledged that additional measures would be necessary to fully implement the CES, to be addressed through a series of Commission actions in successive orders. Those additional measures were to be determined in an implementation phase that will address several issues identified in Appendix F of the CES Framework Order along with other implementation issues that may arise.

As part of the implementation phase, on October 31, 2016, Department of Public Service Staff (Staff) and NYSEDA submitted a CES Phase 1 Implementation Plan Proposal (Phase 1 Proposal) to continue implementation of the requirements of the CES Framework Order for its launch in 2017. The Phase 1 Proposal included details and processes regarding RES eligibility, certification, long term procurement of RECs, LSE demonstration of compliance and other reporting requirements. The Commission approved the CES Phase 1 Implementation Plan Proposal by order dated February 22, 2017<sup>4</sup> with certain revisions as described in the body of the Order and directed the filing of a Final Phase 1 Implementation Plan

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<sup>1</sup> Case 15-E-0302, Proceeding to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

<sup>2</sup> Case 18-E-0071, In the Matter of Offshore Wind Energy, “Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement,” issued and effective July 12, 2018. NYSEDA expects to file proposals as to the administration of the LSE OSW compliance obligations in the future.

<sup>3</sup> Case 15-E-0302, supra, Order Adopting Measures for the Retention of Existing Renewable Baseline Resources (issued March 16, 2018). The Order also increases the size threshold for qualifying hydro resources to 10 MW, revises cost tests and review processes, and establishes three-year terms for standard contracts under the maintenance program. (Tier 2 Order).

<sup>4</sup> Case 15-E-0302, supra, Order Approving Phase 1 Implementation Plan (issued February 22, 2017). (CES Phase One Order).

within 30 days. The Final Phase 1 Implementation Plan, incorporating the changes required by the February 22 Order, was filed by Staff and NYSERDA on March 24, 2017.

Following issuance of the Order Approving Phase 1 Implementation Plan, the Commission in a parallel docket issued an order in its Value of Distributed Energy Resources case which contained implications for the implementation of the RES (the VDER Order).<sup>5</sup> The VDER Order identified categories of distributed energy resources (DERs) and, for each category, direction as to whether a given project was eligible to bid into Tier 1 RES solicitations, whether the New York Generation Attribute Tracking System (NYGATS) would create transferable certificates in the generator's account or non-transferable certificates in a customer account, and whether the certificates count towards the interconnecting LSE's RES Tier 1 compliance mandate. The Order established that MWh exported to the grid from one category of DER (Phase One NEM, Community Distributed Generation projects selecting the default Interconnecting-LSE-Option) would result in Tier 1-eligible RECs for the interconnecting LSEs for their own RES compliance use, but that such RECs would not be tradable. The VDER Order foreshadowed that, in Phase Two VDER, "substantially more REC tradability" would become necessary, and expanded REC tradability could be considered for the RES more broadly.

Staff and NYSERDA filed the CES Phase 2 Implementation Plan Proposal (Phase 2 Proposal) on May 12, 2017. The CES Phase 2 Implementation Plan Proposal continued the process of executing a plan in furtherance of the goals and requirements of Commission orders regarding the CES. The Phase 2 Proposal included Staff's recommendations to modify the annual targets for LSE obligations for 2018 through 2021 as adopted in the CES Framework Order, a clarification of the treatment of voluntary purchases and baseline resources in observing progress toward the CES goals, protocols for the application of an annual divergence test, program design and procedures for the sale in 2018 of Tier 1 RECs procured by NYSERDA under long-term contracts, and provided direction for post-2018 design modifications, established a method to calculate the alternative compliance payment (ACP) for 2018 and to utilize any ACPs received by NYSERDA, and provided additional details regarding NYSERDA's long term procurement design.

The Commission approved the Phase 2 Proposal by Order dated November 17, 2017<sup>6</sup> with certain revisions as described in the body of the Order and directed the filing of a Final Phase 2 Implementation Plan within 30 days. The Final Phase 2 Implementation Plan, incorporating the changes required by the November 17 Order, was filed by Staff and NYSERDA on December 18, 2017.

This CES Phase 3 Implementation Plan Proposal (Phase 3 Proposal) continues the process of executing a plan in furtherance of the goals and requirements of Commission orders regarding the CES. It incorporates changes required by the Commission's November 17 Order, previously unaddressed issues from the CES Framework Order and other existing Commission Orders, procurement results, and other

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<sup>5</sup> Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, and Case 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, Order on Net-Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (VDER Order).

<sup>6</sup> Case 15-E-0302, supra, Order Approving Phase 2 Implementation Plan (issued November 17, 2017). (CES Phase 2 Order).

market and reflects RES program developments since the filing of the Phase 2 Implementation Plan. Specifically, the Phase 3 Proposal:

1. Clarifies how obligated load is calculated.
2. Amends RES Tier 1 certification processes for eligible VDER resources.
3. Proposes to extend the commercial operation milestone date under RES Tier 1 procurements.
4. Proposes program design and procedures for the sale in 2019 and beyond of Tier 1 RECs procured by NYSERDA under long-term contracts, including:
  - a. Sale frequency and timing;
  - b. Sale pricing and inventory management process;
  - c. Eligible REC purchasers and transferability;
  - d. Sale methods; and
  - e. Considerations for potential future modifications to any of the above.
5. Proposes the continuation of current methods to calculate the alternative compliance payment (ACP) for 2019 and beyond and provides considerations regarding potential future modifications.
6. Proposes Tier 1 REC banking rules applying to LSEs and NYSERDA for 2019 and provides considerations for potential future modifications.
7. Outlines and clarifies the state reporting requirements under the CES, including the content and timing of the Triennial Review process, and provides a schedule of ongoing filings.

## 2. Tier 1 RES LSE Obligation and Targets

### 2.1 Calculation of Load for LSE's Annual CES Compliance Obligations

The obligated load for each individual LSE is currently calculated using the methodology provided in the CES Framework Order and further clarified in the CES Phase 2 Order. The CES obligated load for each LSE is the sum of that LSE's (i) transactions with the New York Independent System Operator (NYISO) associated with serving retail load in New York<sup>7</sup>, (ii) load such as load served by Public Utility Regulatory Policies Act eligible facilities that transact directly with electric distribution companies, and (iii) energy exports to the grid by facilities receiving Tier 1 RECs under VDER.<sup>8</sup> For each LSE, these load components are available in the LSE's NYGATS Account and the sum is designated as that LSE's "Total NY Load." Certain behind-the-meter (BTM) generation, such as energy consumed by a customer on-site at the time it is generated, is not included in an LSE's Total NY Load.<sup>9</sup>

Each LSE's annual Tier 1 REC obligation is calculated as the product of its Total NY Load in NYGATS and the Annual LSE Obligation included in Table 1 below, expressed as a percentage. Each LSE's annual ZEC obligation is calculated as the product of its Total NY Load and its load share ratio based on the sum of Total NY Load for all LSEs.

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<sup>7</sup> For example, a small quantity of wholesale load transacted through NYISO for the Orange and Rockland Utilities service territory serves customers physically located in New Jersey, and therefore is not subject to the RES Tier 1 obligation.

<sup>8</sup> CES Phase 2 Order, p. 12.

<sup>9</sup> CES Phase 2 Order, p. 12.

## 2.2 Derivation of Tier 1 LSE Obligation

The Final Phase 2 Implementation Plan reflected a revised calculation of the RES Tier 1 LSE obligations, and shows the application of that approach for 2018 through 2021, consistent with the CES Framework Order and the Commission’s November 2016 Clarification Order. The aggregate statewide Commission jurisdictional load, for which LSEs are expected to procure RES Tier 1 RECs or make ACPs in fulfillment of their RES compliance obligation and the percentage annual Tier 1 RES LSE obligation, are currently calculated using the methodology provided in the CES Framework Order and further clarified in the Order Approving Phase 2 Implementation Plan. The percentage obligation targets are derived based on the (i) the sum of “Tier 1 LSR” RECs expected to be generated in each year from projects under contract under RPS Main Tier Solicitations conducted through 2016 plus expected Tier 1 RECs procured for the RES by NYSERDA in 2017 and 2018, as they become operational, plus those BTM RECs from new distributed renewable energy resources that are deemed eligible (facilities receiving Tier 1 RECs under VDER), divided by (ii) the forecasted aggregate statewide Commission jurisdictional load. Forecasted jurisdictional load in turn starts with the load forecast developed by the New York Independent System Operator (NYISO) in its Load and Capacity Data Report (Gold book), minus a projection of additional energy efficiency (beyond those contemplated by the NYISO in its forecast) minus LIPA and NYPA allocated load.<sup>10</sup>

In the Final Phase 2 Implementation Plan, as a proxy for the expected timelines between receipt of a NYSERDA award and a facility’s commercial operation, the Tier 1 RECs procured in each annual NYSERDA solicitation were assumed to become available to meet an LSE Tier 1 REC obligation based on a three-year lag between contracting and the commencement of operations (i.e., Tier 1 RECs acquired through the 2017 solicitation will be minted beginning in 2020).<sup>11</sup> The RES Tier 1 LSE obligation percentages in effect for 2018 through 2021 are therefore based on generation from contracted supply and eligible VDER RECs as forecasted in 2016, as well as on the forecasted load from the NYISO’s 2015 Gold book.

*Table 1: Current RES Tier 1 LSE Obligation (GWh and % targets)<sup>12</sup>  
- Jurisdictional -*

Year	Forecasted Load	Tier 1 VDER	Tier 1 LSR	Tier 1 VDER and LSR	Annual LSE Obligation
2018	116,593	53	121	173	0.15%
2019	116,274	141	768	909	0.78%
2020	116,026	228	3,075	3,303	2.84%
2021	114,861	316	4,558	4,874	4.20%

## 2.3 Future Targets

The Final Phase 2 Implementation Plan<sup>13</sup> specified that NYSERDA and Staff would, in future implementation plans, develop and include a rolling trajectory of no less than 3 years for the LSE

<sup>10</sup> Case 15-E-0302, *supra*, Clean Energy Standard Final Phase 2 Implementation Plan (issued December 18, 2017). (CES Phase 2 Plan) p. 5-6.

<sup>11</sup> CES Phase 2 Plan, p. 3.

<sup>12</sup> CES Phase 2 Plan, Table 4.

<sup>13</sup> CES Phase 2 Plan, p. 6.

mandated percentage targets and the NYSEERDA Tier 1 REC procurement targets. The purpose of such updates is to provide additional certainty for LSEs, renewable developers and other market participants to incorporate the updates into their planning process.

As demonstrated in the table above, the Final Phase 2 Implementation Plan set targets and obligations through to 2021. NYSEERDA and Staff propose to file the 2022 targets and LSE obligation during the third quarter of 2019 along with the results of the most recent divergence test. NYSEERDA and Staff will work closely to develop the 2022 targets and the resulting LSE obligation. Additional details on filings and timing can be found in Section 7.2 of this implementation proposal.

### 3. Certification of Eligible Tier 1 RES Resources

According to the March 9, 2017 VDER Order, if a project under the VDER Phase One NEM or Value Stack tariff grants the certificates resulting from their exported generation to the interconnecting LSE then the interconnecting LSE may use the associated NYGATS certificates to satisfy the utility's RES Tier 1 compliance requirements if the project applies for Tier 1 certification and is deemed eligible to create Tier 1 RECs.<sup>14</sup> DER projects that enroll in VDER Phase One NEM or Value Stack are ineligible to bid in RES Tier 1 solicitations. The certification process described in the Final Phase 1 Implementation Plan sought to maintain simplicity where possible yet be robust where necessary to ensure ongoing compliance with RES requirements. NYSEERDA proposes the following changes to the certification process in order to efficiently manage the certification of the anticipated volume of Tier 1 REC-creating VDER projects, while maintaining the legitimacy of the certification process.

#### 3.1 Certification of Tier 1 eligible VDER Resources

In the time that has transpired since the March 9 VDER Order, the interconnecting LSEs have updated their tariff language and application processes to accurately communicate to customers the REC ownership choice they must make when choosing VDER for their project. This updated tariff language has been filed with the Commission and is publicly available.<sup>15</sup> Additionally, interconnecting utilities currently report the installed capacity of DER in their service territory as required under the Interconnection Inventory<sup>16</sup> section of the New York State Standardized Interconnection Requirements (SIR). Staff and the utilities are working to revise the SIR Inventory Reporting to include VDER as a reportable metering type. Once this update is completed, NYSEERDA and Staff propose to use the information reported to the SIR Inventory in making determinations of Tier 1 eligibility for VDER projects submitted by interconnecting LSEs. Interconnecting utilities will use the Application Number as reported in the SIR Inventory in the NYGATS project registration (as either Plant Name or Unit Name). The application number will be cross-referenced with the SIR Inventory reporting database to validate the tariff type as VDER, the in-service date as after 1/1/2015, the fuel type as eligible, and that the nameplate capacity matches the NYGATS project registration.

NYSEERDA also proposes that a determination of eligibility for a VDER Resources will not require the issuance of a Statement of Qualification by NYSEERDA as is the case for other resources. Since the

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<sup>14</sup> The VDER Order provided guidance that VDER projects submitted by NYGATS Account Holders other than an interconnecting LSE are not eligible for Tier 1.

<sup>15</sup> Matter Number 15-02703 or NYS Department of Public Service Electronic Tariff System at <https://www2.dps.ny.gov/ETS/home/index.cfm>

<sup>16</sup> Matter Number 13-00205

determination of eligibility for VDER Resources utilizes a publicly available data source, the SIR Inventory, a Statement of Qualification issued by NYSEERDA is unnecessary. As is the case for all certified facilities, VDER projects that are deemed eligible to create Tier 1 RECs will be listed in the publicly available Operational Eligibility report in NYGATS. VDER projects will only be deemed eligible once the project is listed as complete and accepted into operation in the publicly available Interconnection Inventory Information section of the New York State SIR.

## 4. RES Tier 1 Procurement Design Features

As per the CES Framework Order NYSEERDA will issue an annual request for proposals (RFP) for Tier 1 RECs under long-term agreements. If NYSEERDA does not meet its designated target of RECs procured in a single annual RFP, a second RFP will be issued in the same year.

### 4.1 Commercial Operation Milestone Date

The Final Phase 1 Implementation Plan set a Commercial Operation Milestone Date (COMD) for awarded facilities approximately 2 years from the anticipated selection date, which may be extended by up to another 2 years. Since the outset of the RES Tier 1 procurements, experience suggests that bidders may face procedural delays in permitting or interconnection to NYISO which may under some circumstances impose significant risks to the bidder that are outside of bidder's control. Such risk may discourage bidders and reduce competition. To mitigate this risk, in the next Tier 1 RFP and going forward NYSEERDA proposes to allow for two additional 6-month extension periods, that will result in an allowable COMD approximately 5 years in total from the anticipated selection date.

### 4.2 Co-Location and Aggregation

As described in the Final Phase 1 and 2 Implementation Plans, NYSEERDA anticipated that the long-term Tier 1 RES procurement and evaluation processes and criteria may evolve over time. Both Plans considered threshold eligibility requirements for Co-located and Aggregated facilities and associated implementation impacts. Tier 1 eligible co-located facilities may submit separate and distinct bids in NYSEERDA's Tier 1 REC procurements. However, pursuant to the VDER Order, most categories of DER are currently ineligible to participate in RES Tier 1 Solicitations. Therefore, NYSEERDA will monitor any changes to market rules that would allow aggregated facilities to participate in a future RES Tier 1 solicitation and incorporate those processes and criteria in a subsequent implementation plan.

## 5. NYSEERDA Tier 1 REC Disposition

Per the CES Framework Order, NYSEERDA was tasked with reselling Tier 1 RECs procured through RPS Main Tier central procurements (pre-2017) and Tier 1 RES procurements (2017 and thereafter) for ultimate use by RES-obligated LSEs. The processes and procedures by which Tier 1 eligible RECs purchased by NYSEERDA through Main Tier RPS contracts were resold to RES-obligated LSEs during 2017 and 2018 were dictated by prior Implementation Plans.

Under the 2017 REC resale process, LSEs were offered a single opportunity to reserve and purchase RECs procured by NYSEERDA for a limited period of time during which they could elect to purchase their pro-rata share of Tier 1 RECs from NYSEERDA. The maximum amount LSEs were allowed to purchase was on the *historical* load share ratio of the LSE, which had no direct correlation with their 2017 actual obligation. Purchases were effectuated by LSEs executing a Commission-approved purchase agreement,



and LSEs were obligated to make equal monthly payments for their total reservations commencing in January of 2017. To prevent potential for speculators procuring NYSERDA resold RECs and reselling them to LSEs at higher prices, as well as to simplify the initial process while REC volumes remained small, the CES Framework Order restricted which entities were eligible to purchase RECs from NYSERDA to participating LSEs, and disallowed transferability of RECs purchased by NYSERDA from LSEs to other parties.

Through the Final Phase 2 Implementation Plan, the resale approach was modified for 2018, from prospectively soliciting interest from LSEs to contractually commit to purchase NYSERDA's anticipated Tier 1 RECs prior to LSEs knowing their load, to four quarterly Tier 1 REC sale events, during which NYSERDA offers the actual number of Tier 1 RECs in NYSERDA's NYGATS account at the time of the sale. NYSERDA offers to LSEs Tier 1 RECs through quarterly offerings designed to align with the certificate issuance process in NYGATS. By no later than ten (10) calendar days after the last month of each calendar quarter, NYSERDA announces the quantity of Tier 1 RECs to be offered for sale, and the sale process concludes within twenty-eight (28) calendar days of the last month of each quarter. Implementing the quarterly sales process obviated the need for excess RECs held by LSEs at the end of the 2018 compliance year to be sold back to NYSERDA at cost. Therefore, the NYSERDA REC buyback process was discontinued for 2018.<sup>17</sup>

These changes were intended to benefit LSEs by no longer holding them to their potentially obsolete historic load share ratio, while removing a range of estimation risks and capital commitments, by better aligning the timing of purchases with knowledge of their obligations. These changes also were intended to benefit NYSERDA, as reducing the aforementioned LSE risks may encourage LSEs to purchase NYSERDA's RECs could improve NYSERDA's cash flow, reduce NYSERDA's working capital needs, and reduce the magnitude of the annual reconciliation process.<sup>18</sup>

With respect to pricing for the 2018 compliance period, on December 1, 2017 NYSERDA filed its vintage 2018 Tier 1 REC sale price with the Commission<sup>19</sup> and posted the vintage 2018 Tier 1 REC sale price on its website. The 2018 Tier 1 REC sale price of \$17.01/MWh, which applies for each quarterly sale, was based on the *projected* weighted average cost per MWh NYSERDA paid to acquire all the vintage 2018 Tier 1 RECs projected to be sold in 2018. NYSERDA accepts the risk that the actual weighted average cost of RECs purchased by NYSERDA during calendar year 2018 may differ from this projection. Any vintage 2018 RECs that remain unsold at the end of a quarterly sale process will be offered again with the number of RECs offered for sale in the subsequent quarter. Vintage 2017 Tier 1 RECs not purchased from NYSERDA by LSEs in 2017 will be offered through quarterly sales processes during 2018 at their original vintage 2017 Tier 1 RECs of \$21.16 per Tier 1 REC.

Finally, while the CES Framework Order required Staff to recommend, for 2018 and subsequent years, whether NYSERDA-procured RECs should be tradable as part of an implementation proposal, and requested that parties comment on the concern that trading of NYSERDA procured RECs may result in increased cost through arbitrage, the Commission concluded that a near term change in REC

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<sup>17</sup> CES Phase 2 Plan, p. 15.

<sup>18</sup> CES Phase 2 Plan, p. 9.

<sup>19</sup> Case 15-E-0302, *supra*, Filing Regarding Renewable Energy Standard 2018 Tier 1 Renewable Energy Credit (REC) and Alternative Compliance Payment (ACP) Price (filed December 1, 2017).

transferability rules under the RES would be out of alignment with the VDER Order and the expected evolution of REC transferability rules in future years. Therefore, for 2018, the Commission retained the limitation that only LSEs could purchase RECs from NYSERDA, and that such purchases would not be transferrable.<sup>20</sup>

## 5.1 Sale Frequency and Timing

Under this Phase 3 Implementation Plan Proposal, NYSERDA and Staff propose to continue to offer in 2019 and beyond quarterly Tier 1 REC sales to LSEs using the approach adopted in the Final Phase 2 Implementation Plan. NYSERDA and Staff propose to reduce the length of the sale period from 28 days to 21 days, and to update and clarify the REC Resale Process Schedule as shown in Table 2 for 2019. NYSERDA and Staff propose to follow the same methodology of announcing and concluding the sale in subsequent years.

*Table 2: Proposed 2019 REC Resale Process Schedule*

Trading Period	Tier 1 REC Sale Offer Announcement	Tier 1 REC Sale Process Conclusion
Q1	Between March 31, 2019 and April 10, 2019	Announcement + 21 calendar days
Q2	Between June 30, 2019 and July 10, 2019	Announcement + 21 calendar days
Q3	Between September 30, 2019 and October 10, 2019	Announcement + 21 calendar days
Q4	Between December 30, 2019 and January 10, 2020	Announcement + 21 calendar days

## 5.2 Sale Pricing and Inventory Process

NYSERDA and Staff propose to continue the sale frequency and process as well as the inventory process employed in 2018 until otherwise modified in a future implementation plan. NYSERDA and Staff propose to continue the pricing methodology for Tier 1 RECs for the current and prior compliance year vintage, while proposing a modification to older vintages. As NYSERDA may bank unsold RECs for 2 years, NYSERDA may reduce the sale price for banked Tier 1 RECs that are scheduled expire after the end of the current compliance year. For example, since Tier 1 RECs may be traded in two subsequent compliance periods, unsold 2017 vintage Tier 1 RECs will expire at the end of the 2019 compliance period. Under this proposed modification, upon consultation with Staff, NYSERDA may propose to sell any remaining 2017 vintage Tier 1 RECs at a reduced price during the 2019 compliance period. If NYSERDA's only option is to sell such Tier 1 RECs at their original cost, there is a risk that this price may be unappealing to LSEs (for instance if Tier 1 RECs from subsequent years are available at lower price in ample sufficient quantity). NYSERDA proposes to maintain the flexibility to price such expiring Tier 1 RECs in order to clear its inventory of expiring Tier 1 RECs, subject to prevailing market conditions. 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.

Until otherwise modified in a future implementation plan, NYSERDA will continue to file the Tier 1 REC price annually, as adopted in the Final Phase 2 Implementation Plan and described above for 2018.

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<sup>20</sup> Except as established in the VDER Order, which identified the circumstances under which NYGATS Certificates designated as "non-transferrable," may still be transferred in certain contexts and for certain purposes. VDER Order, p. 61.

### 5.3 Eligible Purchasers and Transferability

As in 2018, only RES-obligated LSEs may purchase RECs from NYSERDA for the 2019 and future compliance years until otherwise modified in a future implementation plan. The rationale stated in the CES Framework Order for limiting NYSERDA resales to only LSEs, as well as for restricting tradability of RECs sold by NYSERDA was that allowing NYSERDA-procured RECs to be traded could result in increased costs to ratepayers because of arbitrage (i.e., in the event of shortage, if non-LSEs could buy RECs from NYSERDA and resell to LSEs at a market price in excess of the NYSERDA purchase price). The CES Framework Order required Staff to recommend for 2018 and subsequent years whether NYSERDA-procured Tier 1 RECs should be tradable as part of an implementation proposal, and parties should be prepared to comment on the concern that trading of NYSERDA procured Tier 1 RECs may result in increased cost through arbitrage.

In addition, the VDER Order established restricted REC transferability (defined as tradable, sellable and/or monetizable) rules for distributed energy resources (DER) under RES Tier 1 for existing net metered projects as well as those installed under VDER Phase One NEM and VDER Phase One Value Stack tariffs. The VDER Order also provided that in future Phase Two VDER tariffs, significantly more transferability would be necessary.<sup>21</sup> However, the Final Phase 2 Implementation Plan notes that a near term change in REC transferability rules under the RES would be out of alignment with the VDER Order and the expected evolution of REC transferability rules in future years.<sup>22</sup> Therefore, for the future, as in the 2018 compliance period, non-transferable Tier 1 RECs may only be purchased from NYSERDA by LSEs.

### 5.4 Sale Method

For 2019 and future compliance years until otherwise modified in a future implementation plan, NYSERDA proposes no further changes to the sale method detailed for 2018 in the Final Phase 2 Implementation Plan. However, as laid out in the following section, NYSERDA seeks comment on changes for subsequent years to open up the market as volumes become significant and the potential for divergence of market Tier 1 REC prices from NYSERDA procurement costs increases the risk that NYSERDA's current approach could have unintended consequences (such as NYSERDA being unable to clear its inventory, increased reliance on the utility backstop, etc.).

## 6. Alternative Compliance Payments and Tier 1 REC Banking

### 6.1 Alternative Compliance Payment (ACP) Level

Consistent with the CES Framework Order, LSEs may submit an ACP as an alternative for demonstrating compliance with Tier 1 RECs. The ACP is not a penalty for noncompliance; rather, it is an alternative avenue to compliance. It caps the total cost of the RES because LSEs will have no obligation to incur costs in excess of the ACP. ACP payments will be made to NYSERDA during the reconciliation period for each annual compliance period. While the CES Framework Order established such principles and a process for their effectuation for the 2017 compliance period, the order also required Staff to propose a

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<sup>21</sup> VDER Order, p. 36.

<sup>22</sup> CES Phase 2 Plan, p. 11.

methodology for establishing the ACP level for the Commission's consideration for subsequent years as part of the implementation phase of the CES.

The CES Framework Order established an overarching objective for regional consistency in ACP requirements, given that the alignment or divergence of ACP requirements can materially affect the cost of compliance and that regional markets enabled through consistency of state requirements can contribute to reducing the cost of achieving the RES goal. In addition, LSEs benefit from long-term visibility of the ACP level, which allows them to make rational retail pricing, REC procurement and REC banking or withdrawal decisions. However, other features of the RES need to be fully developed prior to establishing a long-term trajectory for the ACP. To provide LSEs with a static maximum price exposure against which to assess its Tier 1 REC purchase decisions, it is critical that the ACP be established prior to the start of the compliance year and be held constant at that level.

For the 2019 compliance period and until otherwise modified in a future implementation plan, the method of setting the ACP level is proposed to continue using the process adopted in the Final Phase 2 Implementation Plan for 2018, consistent with the approach to NYSERDA REC sale timing and frequency. This approach will continue to provide the marketplace with a transitional level of certainty while providing the ability to consider evolving RES design and market conditions. By December 1, 2018, NYSERDA will file the 2019 ACP price in a filing with the Commission and post the ACP price on its website. The 2019 ACP will be calculated in consultation with Staff, based on the projected weighted average cost per MWh that NYSERDA expects to pay to acquire the Tier 1 RECs expected to be offered in 2019 (the 2019 Tier 1 REC sale price), plus any Commission-approved administrative adder, (if applicable), plus 10 percent. The ACP will remain constant throughout 2019 and will be paid directly to NYSERDA.

## 6.2 Tier 1 REC Banking

For 2019 and until otherwise modified in a future implementation plan, Tier 1 REC banking rules will largely remain unchanged from the 2018 banking rules as outlined in the Final Phase 2 Implementation Plan, with the notable exception related to VDER Tier 1 RECs described below. NYSERDA will continue to be authorized to bank Tier 1 RECs for two subsequent compliance periods. Obligated LSEs may use banked NYGATS certificates associated with a given Vintage in two subsequent Vintage compliance periods (banked certificates), subject to the following limitations:

1. Only obligated LSEs, and no other market participants, may bank excess certificates above the current year's Tier 1 RES LSE obligation towards future RES LSE obligation compliance. Such banked certificates may not be transferred.
2. The obligated LSE banking surplus certificates is in compliance with the RES for all previous compliance periods.
3. Banked certificates are in excess of the number of certificates needed in the compliance period in which they were generated, and such excess NYGATS certificates have not previously been used for compliance with the RES and have not been otherwise transferred to other parties.

4. Non-VDER Tier 1 NYGATS certificates banked in a compliance year may not exceed sixty percent (60%) of the LSE's compliance obligation for that year.<sup>23</sup>

On December 18, 2017, the Joint Utilities (JU) filed a petition for clarification related to the Final Phase 2 Implementation Plan and the VDER Phase One order, specifically regarding treatment of RES Tier 1 certificates. The JU highlighted that the Final Phase 2 Implementation Plan reduced Tier 1 REC purchase obligations for LSEs, given then-expected volumes of compliance RECs available through large-scale renewables procurements, while the VDER Order subsequently obligated the utilities to purchase, and retire for Tier 1 compliance obligations, RECs from exports to the grid generated by DERs that retain the default option to receive REC compensation from the utilities. The JU petition argues that the expected volume of Tier 1 VDER RECs will greatly exceed not only their own compliance requirements, but potentially the overall compliance targets, and that the combination of existing banking caps and limits on transferability of RECs would necessitate that a large volume of Tier 1 RECs would effectively be forfeited resulting in increased cost to ratepayers.

On July 16, 2018 the Commission issued an Order<sup>24</sup> that granted the December 18, 2017 JU petition in part, stating that the members of the Joint Utilities<sup>25</sup> would be permitted unlimited banking of Tier 1 RECs from VDER projects for the compliance years spanning 2018-2022. Therefore, for compliance years 2018 through 2022 the 60% banking limitation will not apply to Tier 1 RECs from VDER projects. Non-VDER Tier 1 RECs banked by members of the JU will remain subject to the 60% banking limitation during this period. The Banking Order did not change the eligibility of banked Tier 1 RECs in for use in subsequent compliance years and therefore all Tier 1 RECs will remain subject to the requirement that they are only eligible towards compliance within the two subsequent compliance years from the vintage of their issuance.

Though the 60% banking limitation on non-VDER Tier 1 RECs remains in place for 2019, it may be revised for future compliance years. The LSE obligations in years 2017-2019 have been relatively small but will increase significantly in coming years in order to meet the 50 by 30 goal. The Phase 1 Implementation Plan Proposal had initially proposed that banked certificates not exceed 30% of the certificates needed by LSEs for current year compliance. However, in its Order approving the Phase 1 Implementation Plan, the Commission reasoned that when the compliance targets are small in early years, a larger percentage limit of banked Tier 1 RECs is appropriate to allow LSEs to meet the increasing percentage of future year obligations and proceeded to establish the 60% cap on an interim basis.<sup>26</sup> Additionally, the Banking Order stated that the supply of VDER Tier 1 RECs will be taken into account when RES compliance obligations are set for subsequent years. As the LSE obligation targets increase, the percentage banking limitation may be reduced to ensure continued demand for current vintage Tier 1 RECs. Long-term banking rules will be considered as part of the triennial review process.

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<sup>23</sup> Such banked NYGATS certificates must be produced by the generation of electrical energy sold to New York retail customers during the compliance period in which they were generated; and have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sale, or used to satisfy obligations in jurisdictions other than New York, or be used to substantiate any voluntary program claims.

<sup>24</sup> Case 15-E-0302, supra, 'Order Providing Limited Modification to Certificate Banking Restrictions' (issued and effective July 16, 2018). (Banking Order)

<sup>25</sup> The members of the Joint Utilities are: Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation

<sup>26</sup> CES Phase 1 Order, p. 31-32.

## 7. CES Reporting Requirements and Schedule of Filings

### 7.1 State Reporting Requirements

The Final Phase 1 Implementation Plan outlined a set of state reporting requirements under the CES. The three main reports identified for NYSERDA to produce were:

1. CES Financial Status Report – an annual report that describes program revenues and expenditures for the prior compliance year, including ACP payments collected and cumulative program surplus or shortfall.<sup>27</sup>
2. RES Procurement Performance – an annual report that includes non-confidential data to summarize the results of the NYSERDA RES solicitations conducted in the most recent compliance period, project development status of contracted projects, aggregated quantities of procured RECs as of the end of the compliance period, a summary of the disposition of those RECs, and a summary of ACP funds received and their use.<sup>28</sup>
3. CES Compliance Report (CES Progress Report) – an annual report that summarizes information provided in LSE compliance filings and that informs the Commission, Staff and interested parties of the RES and ZEC programs’ progress in meeting each program’s targets and Commission’s renewable policy goals.
4. RES Program Impact and Evaluation – a period report assessing the RES program impacts and success to date, which may include economic impacts, contributions to reducing greenhouse gases and meeting the Commission’s renewable energy goals.

Given NYSERDA’s experience administering the first full year of the CES, including implementation of the reporting requirements, some adjustments to the initially outlined reporting requirements appear appropriate. NYSERDA proposes to make limited changes as described in the sections that follow. No changes are planned to the RES Program Impact and Evaluation report at this time. In addition to the CES reporting requirements, LSEs are also required to submit a report in NYGATS documenting their annual Tier 1 RES compliance activities as described in more detail below.

#### a. CES Financial Status Report

The CES Financial Status Report is an annual report that describes program revenues and expenditures for the prior compliance year, including ACP payments collected and cumulative program surplus or shortfall. The CES Framework Order stated that the disposition of ACPs must reduce the costs of the RES program and ordered Staff and NYSERDA to recommend how to achieve that objective through an implementation proposal. In the Final Phase 2 Implementation Plan, Staff and NYSERDA clarified that

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<sup>27</sup> The Annual CES Financial Status Report is available at:

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={08DE4FDA-2C47-4440-87A9-AC0C672A529C}>

<sup>28</sup> The Annual RES Procurement Performance Report is available at:

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2C7BF743-37F0-4F50-ACD4-662EF990C822}>

ACP revenues will be used to reduce or defer the need for a customer-funded financial backstop to ensure that NYSERDA has enough funds to pay generators for RECs.<sup>29</sup>

In order to limit the potential accumulation of funds, NYSERDA will report, on an annual basis, RES program revenues (including but not limited to net proceeds from the resale of RECs it has procured, ACP payments received, and interest earnings) and program expenses, and any surplus or shortfall for the year, on a cumulative basis.

The Final Phase 2 Implementation Plan specifies that if any cumulative surplus is more than 25% of NYSERDA's contractual Tier 1 REC payment obligation to generators for the current year, as part of its annual filing, NYSERDA will propose, for Commission approval, a use for the excess portion (i.e., amount in excess of 25%) that is in the ratepayers' interest. The cumulative surplus to be measured against the Tier 1 REC payment obligation in this test does not include administrative funding which is addressed in the annual administrative filing.

#### **b. RES Procurement Performance Report**

The RES Procurement Performance Report will still be issued annually as outlined in the Final Phase 1 Implementation Plan, but the content will be modified to include the status of all active RPS contracts and Tier 2 maintenance contracts. NYSERDA proposes to merge the historical annual RPS annual report with Tier 1 RES procurement reporting into a single annual report going forward. It will not include information on REC disposition or ACP funds, which are more appropriately accounted for in the CES Progress Report and CES Financial Status Report, respectively.

Published annually, this report will include cumulative data on RES procurement activity including:

1. A summary of the results of NYSERDA RES solicitations for large-scale renewables conducted each year, as well as future offshore wind procurements;
2. Project development status for all active NYSERDA RPS-funded and RES contracts through end of each year;
3. Aggregated quantities of NYSERDA-procured RECs categorized by Tier 1 and Non-Tier 1 projects;
4. Status of Maintenance contracts for both RPS-funded and Tier 2 projects; and
5. Once the data is available (three years after commencement of each contract), a summary of incremental economic benefits realized from projects receiving RES contracts, as verified through independent audit, may also be included.

#### **c. CES Progress Report**

NYSERDA proposes to broaden the report formerly referred to as the annual CES Compliance Report to summarize and analyze progress towards the Commission's renewable energy goals, and therefore proposes to rename it the CES Progress Report. In addition to reporting on aggregate LSE compliance with RES and ZEC obligations over the compliance period, the CES Progress Report will discuss the results of other means to achieve the 50% by 2030 goal, including accounting for baseline renewables and voluntary market activity. As proposed, a CES Progress Report will be published annually and include:

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<sup>29</sup> The backstop was outlined in the CES Framework Order and refined in a November 2016 Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 16, 2016).

1. Contributions of the RES towards the 50% by 2030 goal, including:
  - a. Tier 1 RECs used for RES compliance, by vintage, location, and resource type.
  - b. Assignment of offshore wind RECs procured by NYSERDA in order to fulfill LSE obligations to obtain offshore renewable energy credits (ORECs).
  - c. Accounting of Tier 2 Maintenance Resources receiving maintenance support contracts.
2. Measurement of the production and disposition of RECs created by other baseline resources that serve NY load and can be counted toward the 50% by 2030 goal, including:
  - a. Resources under RPS Main Tier Contracts.
  - b. Resources under expired RPS main tier contracts.
  - c. Resources supported under the customer-sited tier of the RPS.
  - d. Resources supported by the NY-Sun program.
3. Voluntary purchases of renewable energy.
4. The amount and types of fuels used to generate electricity to supply New York's needs as per the annual New York System Mix calculated by NYGATS. The New York System Mix, referred to in NYGATS as the NYISO System Mix, is based upon the annual generation from:
  - a. All generation units registered in NYGATS
  - b. Unregistered generation units that transact through the NYISO
  - c. Unregistered net metered facilities (estimated)
  - d. Energy imported in the New York Control Area
  - e. With energy and attributes that have been exported from the New York Control Area excluded.

As directed by the Commission in the Phase 2 Implementation Plan Order NYSERDA will publish, on the CES website, the methodology used by NYGATS for calculating the NYISO System Mix when the CES Progress Report is released.
5. LSE compliance with ZEC obligation, which is not included as part of the 50 by 30 goal.

## 7.2 Annual Divergence Test and Target Setting

The CES Framework Order specifies that an annual divergence test should be conducted to assess the balance between mandated demand and anticipated supply of Tier 1 RECs. Though the CES Framework Order states that the first divergence test will be conducted in the first triennial review in 2020, the Final Phase 2 Implementation Plan clarifies that it may be necessary to identify and potentially mitigate any mismatch in supply and demand prior to the first triennial review.<sup>30</sup> The Final Phase 2 Implementation Plan sets a threshold for a potentially problematic mismatch if there are two consecutive years of either excess ACPs or increasing REC banking by NYSERDA. Specifically, a potentially problematic shortfall would be identified by ACPs in excess of 10% of the total MWh Tier 1 RES obligation in the first of two consecutive years followed by at least 20% of the total MWh Tier 1 RES obligation in the second year. A possibly problematic over-supply would be identified by the presence of increasing banking by NYSERDA measured as the bank balance exceeding 10% of the current year's total MWh Tier 1 RES obligation in the first of two consecutive years, followed by a bank balance exceeding 20% of that year's total MWh Tier 1 RES obligation in the second year.

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<sup>30</sup> CES Phase 2 Plan, p. 7.



Because the divergence test as established in the Final Phase 2 Implementation Plan requires two years of compliance year data, the first divergence test will be conducted by assessing 2017 and 2018 data in September 2019, after all load data is available and LSEs are required to finalize their NYGATS compliance reports for the previous year. The divergence test will be conducted annually on the same schedule thereafter.

If the divergence test indicates shortage or over-supply, NYSERDA will proceed to assess whether the concern is likely to persist, as described in the Final Phase 2 Implementation Plan, and may recommend that the Commission conduct an interim review of the procurement targets and LSE obligations if the divergence is determined to be problematic, persistent, and likely to result in a significant financial impact.

The outcome of the divergence test, regardless of whether it shows a problematic supply-demand mismatch, will also inform setting of the rolling 3-year trajectory of RES Tier 1 obligations and future procurement targets.

### 7.3 Triennial Review

Per the CES Framework Order, starting in 2020, and every three years after that, the Commission will review the CES initiative.<sup>31</sup> NYSERDA and Staff will prepare the triennial review for Commission review and consideration of any necessary program changes needed to obtain the state's renewable energy goals at an appropriate cost to consumers. The triennial review will focus on the RES program and will not include a review of the ZEC program.<sup>32</sup>

The triennial review will include results of the most recent divergence tests conducted since the last triennial review, and an assessment of the trends presented by those results. In the implementation of the triennial review, NYSERDA and Staff will review the three-year rolling trajectory of Tier 1 RES LSE obligation targets and Tier 1 REC procurement targets in the context of the divergence test results, as well as the status of other contributions to the 50% by 2030 goal, including baseline renewable energy supply, voluntary market activity and achievement of offshore wind procurements.

#### a. Timing of First Review

Because LSEs and other market participants require the results of the triennial review to be settled at the earliest possible date to enable their response and planning, NYSERDA and Staff propose that the first triennial review commence at the earliest date by which required information is available. Complete load data for the 2016 to 2018 period will be available by May 2019. Therefore, NYSERDA and Staff propose that the review proceeding commences immediately following reporting of such data, take place over the 12-month period thereafter (June 2019 to May 2020), followed by a June 2020 target date for filing of the triennial review with the Commission followed by a subsequent Commission order, if applicable. Therefore, results of the order would be in effect for the 2021 compliance year. Triennial reviews would proceed on this schedule with a three-year lag between reviews.

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<sup>31</sup> CES Framework Order, p. 117.

<sup>32</sup> As ZEC supply is fixed, LSE obligations are based on a pro-rata load share of available ZECs, and ZEC prices are determined administratively by a formula, the program supply and demand is static and no adjustments are necessary to balance any supply-demand mismatch.

## b. Assessment of Procurement Structure

The triennial review will also consider the effectiveness of the fixed price, REC-only procurement structure, as directed by the CES Framework Order.<sup>33</sup> The Commission considered other procurement structures, but determined a REC-only procurement was the optimal way to balance meeting the financing needs of renewable generation projects with ratepayer costs and maintaining competitive markets. The Commission did note, however, that it would consider other procurement structures if projects are not being developed at a satisfactory pace. Therefore, the triennial review's analysis of Tier 1 REC supply and demand will also consider the effectiveness of NYSERDA's REC-only procurement.

The triennial review will also consider whether a fixed-price REC structure continues to be the optimal approach, or whether other models (such as structures which were considered in the context of offshore wind procurements, or alternatively, a standard offer program for some types of resources or project sizes) can better reduce risks and deliver revenue certainty to developers, while reducing ratepayer costs and maintaining flexibility to respond to market conditions.

In addition to assessing whether supply is available to meet LSE obligations, the triennial review will examine whether and to what degree the procurement structure has impacted:

- cost of RECs compared with neighboring states and other markets;
- extent of reliance on Alternative Compliance Payments;
- effects on ratepayer cost and risk and overall bill impacts;
- rate of entry by competitive developers;
- extent to which projects are developed in-state; and
- extent of in-state projects selling RECs into neighboring markets.<sup>34</sup>

## c. Assessment of Legacy Supply Retention

The triennial review will assess the status of New York's baseline of renewable generation as established in the CES Framework Order. Through the triennial review, these resources will be evaluated for their continued operation or retirement, and for any potential leakage by tracking NYGATS certificates exported to another state over time by comparing the quantity of RECs retired in New York from facilities included in the baseline with the baseline 2014 production, comparing New York Tier 1 REC prices with New England Class 1 REC prices, and reviewing the quantity of existing renewable resources out of contract that could potentially sell renewable attributes into other markets.

As adopted by the Commission, the RES includes a limited program to support the retention and continued operation of certain at-risk baseline resource attributes that demonstrate a financial need and that would cease operations without such support. In its CES Framework Order, the Commission did not adopt Staff's proposal for a RES "Tier 2A," which would include existing legacy renewable energy resources that are eligible to participate in other states' programs, reasoning that these resources have already recovered their capital costs, and vintage and delivery requirements in other states mean 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

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<sup>33</sup> CES Framework Order, p. 102, p. 118.

<sup>34</sup> CES Framework Order, p. 102.

attributes.”<sup>35</sup> The Commission instead defined Tier 2 in an analogous manner to the RPS Maintenance Tier. Tier 2 eligibility was thus limited to run-of-river hydroelectric facilities of 5 MW or less, wind facilities, and biomass facilities that were in commercial operation any time prior to January 1, 2003. Facilities seeking support must demonstrate a financial need, and that the facility will cease operations and no longer produce positive emission attributes without the maintenance contract. The Commission also directed Staff to review the maintenance tier and recommend any proposed changes during the implementation phase.<sup>36</sup>

In December 2016, the Commission declined petitions for rehearing on Tier 2, but directed Staff to propose eligibility changes to Tier 2 ahead of the triennial review. Staff produced a report in October 2017 recommending changes to Tier 2.<sup>37</sup> In its March 2018 Order considering Staff’s recommendations, the Commission expanded eligibility for resources that qualify for baseline maintenance support under Tier 2 of the RES to projects built before January 1, 2015, increased the size of eligible hydro facilities to 10 MW, revised “to-go-cost” analysis, streamlined review processes, and established a standard contract term of three years.<sup>38</sup>

The Tier 2 Order again considered, but did not at that time create, a mechanism with the specific intent of enticing existing baseline supply not to sell energy and renewable attributes out of state. The Commission found that while the erosion of baseline resources to export is a possibility, the timing of and the best way to address such risk is complex and dependent on several variables, including changes to neighboring state and federal policy. The Order directs Staff and NYSERDA to monitor state and federal policies and alert the Commission of any changes that could directly impact fulfillment of New York’s policies.<sup>39</sup> The Triennial Review will include discussion of developments in other state policies and their interactions with the New York renewable energy market in order to evaluate whether the regional landscape requires adjustments to New York’s approach to baseline renewable energy resources in the context of the 50% renewables by 2030 goal.

To assess the risk of significant leakage or decommissioning of existing large-scale renewables from New York and as directed in the Final Phase 2 Implementation Plan, Staff will annually monitor baseline large scale renewable supply. Staff will assess changes in the output of the baseline facilities and the retirement of the associated RECs in New York through NYGATS, and propose adjustments to future LSE RES obligation targets, structures or other RES design features where necessary to maintain progress toward the 50% by 2030 goal.<sup>40</sup>

Given the timeframe of the triennial review, if a need to re-evaluate Tier 2 before completion of the review, NYSERDA and Staff may propose adjustments through a subsequent implementation plan.

#### d. ACP Levels

In the future, ACP levels may need to move towards a more market-based calibration rather than be tethered to NYSERDA procurement prices. The triennial review process will include an assessment of,

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<sup>35</sup> CES Framework Order, p. 116.

<sup>36</sup> CES Framework Order, p. 117.

<sup>37</sup> Case 15-E-0302, *supra*, Staff Report Regarding Retention of Existing Baseline Resources Under Tier 2 of the Renewable Energy Standard Program (issued October 19, 2017).

<sup>38</sup> Tier 2 Order, p. 1.

<sup>39</sup> Tier 2 Order, p 22.

<sup>40</sup> CES Phase 2 Plan, p. 5, CES Framework Order, p. 18.

and, if necessary, recommend for implementation, such changes. Given the timeframe of the triennial review, if an imbalance arises before the completion of the review, NYSERDA may propose, for Commission consideration, adjustments to the ACP price methodology through a divergence test review or subsequent implementation plan.

#### e. Banking Rules

As discussed above, the existing banking rules may not be suitable in the long term. Allowing LSEs to bank up to 60% of the certificates needed by LSEs for current year compliance may not be sustainable as obligations increase, for example. The triennial review will evaluate whether existing banking rules are constraining a healthy REC market from developing, artificially increasing or suppressing REC prices, or otherwise inhibiting LSE compliance at low cost.

#### f. Additional Considerations

The triennial review will also consider other factors of the CES program influencing its success towards achieving state goals. Other issues to be examined, as outlined in the CES Framework Order may include:

- Application to microgrids and CHP;
- Interactions with New York’s Energy Storage policies;
- Impact of offshore wind or other new technologies on the CES program’s success;
- Consideration of NYISO carbon pricing rules currently under development;
- Fuel diversity;
- Interactions with RGGI;
- Resale design;
- Aggregated and co-located facilities in the procurement;
- Setting long-term targets for the RES Tier 1 obligation and/or for RES Tier 1 procurement; and
- Need for CES market monitor.

### 7.4 Schedule of Filings

The schedule for CES administrative, programmatic, and compliance filings is depicted in the timeline in Figure 1 and in Table 3; it is proposed that those filings continue a similar schedule thereafter.

Figure 1: CES Report Filing Timeline

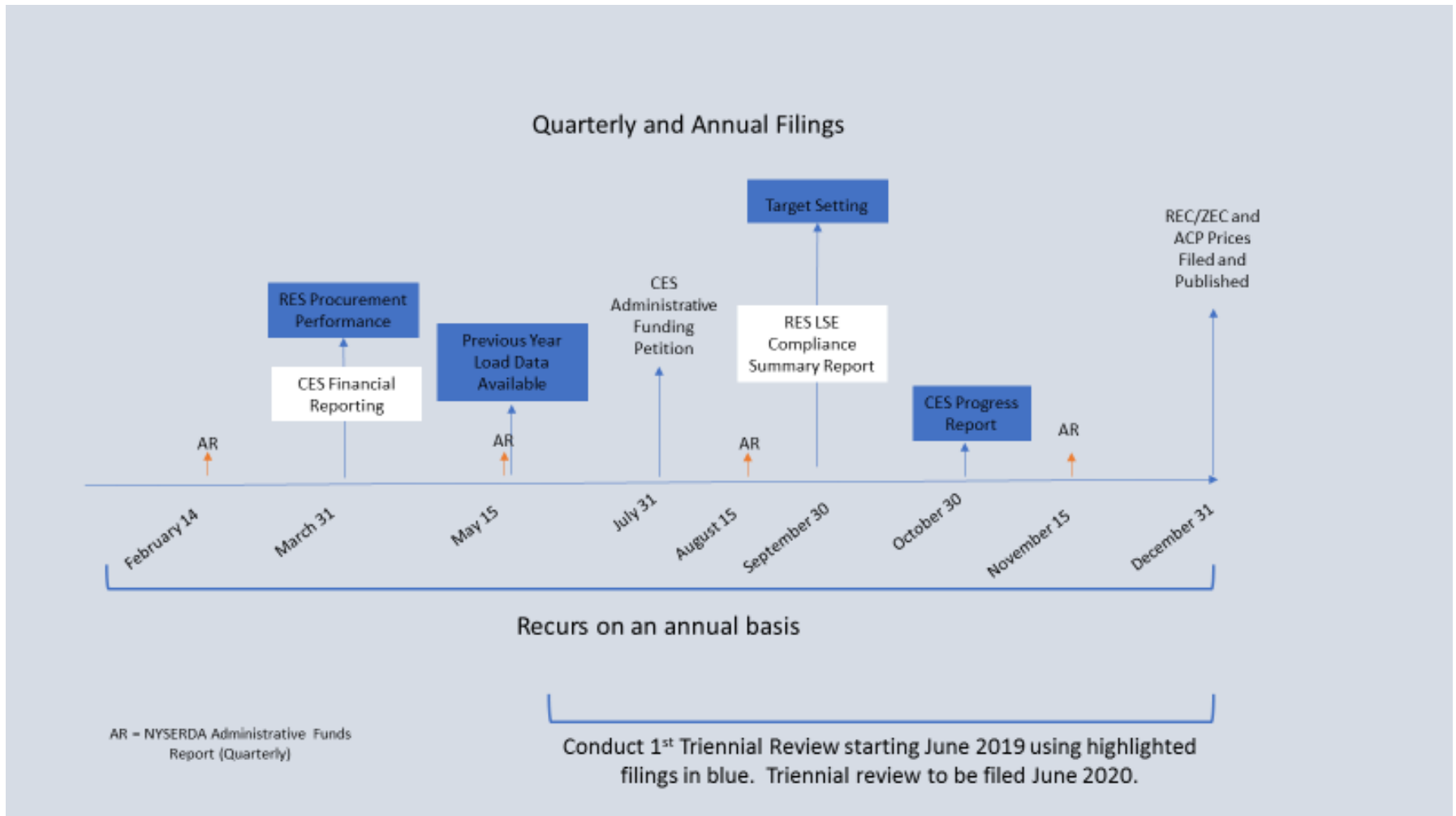


Table 3: Schedule of NYSERDA CES Reports

Item	Type	Public	Frequency	Due Date	Purpose/Implications	Precedents	Dependents
<b>Ongoing, Programmatic Reports</b>							
RES Procurement Performance	Report	Yes	Annual	3/31/2018	Indicates procurement results, contract status, potential supply of Tier 1 RECs and status of contracted baseline renewables		Divergence Test and Target Setting; Triennial Review
CES Financial Status Report	Report	Yes	Annual	3/31/2018	ACP Disposition		Filing for use of excess ACP funds, if applicable
Annual RES Compliance Report	Report	No	Annual	9/30/2018	Summary data on how LSEs met Tier 1 obligation	Individual LSE compliance filings	CES Progress Report
Annual ZEC Compliance Report	Report	No	Annual	10/30/2018	Summary data on how LSEs met ZEC obligation	Individual LSE compliance filings	
CES Progress Report	Report	Yes	Annual	10/30/2018	Progress towards overall 50 by 30 goal	RES Compliance Report	CES Progress Report
REC/ZEC and ACP Prices for upcoming CY	Filing, Other	Yes	Annual	12/01/2018	Set Tier 1 REC price by vintage	Procurement results	Triennial Review
Divergence Test and Target Setting	Petition	Yes	Annual	9/30/2019	Assess supply-demand balance; Set next year of rolling 3-year trajectory of LSE obligations and procurement targets	RES Procurement Performance	Divergence Test and Target Setting
RES Program Impact and Evaluation	Report	Yes	Every three years	5/30/2020	Cost-effectiveness of RES Program	RES Procurement Performance; CES Progress Report	

Item	Type	Public	Frequency	Due Date	Purpose/Implications	Precedents	Dependents
Triennial Review	Report	Yes	Every three years	6/30/2020	Review of RES Program, assessment of whether changes are necessary	RES Procurement Performance; CES Progress Report; Divergence Test and Target Setting	
<b>Administrative</b>							
NYSERDA Administrative Funds (quarterly)	Report	Yes	Quarterly	2/14/2018			
CES Administrative Funding Petition	Petition	Yes	Annual	7/31/2018			