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PUBLIC SERVICE COMMISSION

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Case 16-E-0270 - Petition of Constellation Energy Nuclear Group LLC; R.E. Ginna Nuclear Power Plant, LLC; and Nine Mile Point Nuclear Station, LLC to Initiate a Proceeding to Establish the Facility Costs for the R.E. Ginna and Nine Mile Point Nuclear Power Plants.

PETITION FOR REHEARING OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

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I. INTRODUCTION

Pursuant to Section 22 of the New York State Public Service Law and Section 3.7 of the New York State Public Service Commission's ("Commission") Rules and Regulations, the Independent Power Producers of New York, Inc. ("IPPNY"), a not-for-profit trade association representing the independent power industry in New York State, hereby petitions for rehearing of the Commission's order issued on August 1, 2016, in the above-captioned cases.[1] In the August Order, the Commission adopted a clean energy standard ("CES") requiring that 50% of all electricity used in the State be generated from renewable energy resources by 2030 ("50 by 30 goal") as identified in the 2015 State Energy Plan.[2] To achieve the 50 by 30 goal, the Commission ordered all load serving entities ("LSEs") in the State to serve their retail customers

[1] Cases 15-E-0302 et al., *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Aug. 1, 2016) ("August Order").

[2] *Id*. at 5.

by procuring new "Tier 1" renewable resources, evidenced by the procurement of qualifying renewable energy credits ("RECs"), in specified, annually-increasing proportions of their total loads (the "LSE Procurement Obligation").[3] The Commission limited the eligibility for Tier 1 to renewable resources that came into operation on or after January 1, 2015.[4]

The Commission also established a new Tier 2 to provide maintenance contracts to facilities that demonstrate that, but for the maintenance contracts, they will cease operations and no longer produce positive emission attributes.[5] The Commission limited the eligibility for Tier 2 to run-of-river hydroelectric facilities of 5 MW or less, wind facilities, and biomass direct combustion facilities that were in commercial operation any time prior to January 1, 2003, and that were originally included in New York's baseline of renewable resources calculated when the Renewable Portfolio Standard program was first adopted.[6] Thus, renewable facilities that came into commercial operation before January 1, 2015 (hereinafter called "Existing Facilities") are not eligible to sell their RECs to meet the 50 by 30 goal, and Existing Facilities that came into commercial operation before January 1, 2003 are eligible for maintenance payments only if they demonstrate that they will cease operations without such payments.

As demonstrated below, the Commission committed a substantial error in the August Order that must be corrected on rehearing so that the Commission's CES is fair and non-discriminatory and ensures that the 50 by 30 goal is achieved efficiently and cost-effectively by allowing all existing and new renewable resources to participate in the CES. Specifically, the

[3] *Id*. at 78, 92-93.

[4] *Id*. at 103.

[5] *Id*. at 117.

[6] *Id.*

Commission erred by prohibiting Existing Facilities from being eligible to produce and sell RECs to help satisfy the LSE Procurement Obligation.[7] The Commission justified its decision to prohibit Existing Facilities from being eligible for the LSE Procurement Obligation based on its wholly unsupported statement that Existing Facilities will not sell their clean energy attributes into other states.

In fact, with the enactment of new Massachusetts renewable energy legislation soon after the issuance of the August Order,[8] it is very possible that at least some Existing Facilities in New York will sell their clean energy attributes to Massachusetts for periods of up to 20 years, depriving New York of the ability to rely on these resources in its baseline to meet the 50 by 30 goal. It is very possible that New York will have to replace the clean attributes of Existing Facilities that are sold in Massachusetts with clean attributes from new facilities at a higher cost to meet the 50 by 30 goal.

II. ARGUMENT

A. The Commission Erred in Prohibiting Existing Facilities from Participating in the CES to Help Satisfy the LSE Procurement Obligation.

Section 3.7 of the Commission's rules provides that "[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."[9] With respect to its decision to prohibit Existing Facilities from selling their RECs to LSEs to satisfy the LSE Procurement Obligation, the Commission

[7] IPPNY's rehearing petition with respect to Existing Facilities does not necessarily represent the positions of each of its members and should not be construed as IPPNY's or its members' agreement with other aspects of the August Order not raised herein.

[8] An Act to Promote Energy Diversity, H.R. 4568, 189th Sess. (Mass. 2016).

[9] 16 NYCRR § 3.7.

committed errors of law and fact, and new circumstances warrant a reversal of the Commission's decision.

In Department of Public Service Staff's ("Staff") CES White Paper, it recommended that all LSEs be required to procure RECs from Existing Facilities to support their continued contribution to meeting the 50 by 30 goal. Staff proposed two sub-tiers under Tier 2. The intended purpose of Tier 2a was to provide sufficient revenues to attract renewable resources for which New York must compete with other states. The purpose of Tier 2b was to provide sufficient revenue to maintain existing renewables that are not eligible to sell RECs to other states. In its August Order, the Commission rejected Staff's proposed Tier 2a based on its determination that Existing Facilities have likely recovered most of their initial capital costs and they would not likely sell their attributes to other states.[10] The Commission stated:

> 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.[11]

The Commission's decision prohibiting Existing Facilities from selling RECs to LSEs to meet the LSE Procurement Obligation is arbitrary and capricious and is not supported by substantial evidence. There is no evidence in the record to support the Commission's rationale "that there is no imminent risk" that Existing Facilities will sell their clean energy attributes into other states. To the contrary, Brookfield Renewable Energy Group ("Brookfield") demonstrated

[10] August Order at 116.

[11] *Id*.

in its comments that ample demand exists for existing resources in surrounding markets.[12] Brookfield stated that it and other important New York renewable market participants have submitted proposals in response to solicitations for renewable attributes in New England for existing assets.

Further, soon after the Commission issued its August Order, Massachusetts enacted a new law that requires all electric distribution companies in Massachusetts to solicit, by April 1, 2017, proposals for 15 to 20-year term contracts with existing hydroelectric facilities and new Class I renewable resources. Importantly, these existing hydroelectric facilities can be located in New York. Thus, it is very possible that as soon as the second quarter of next year, substantial amounts of Existing Facilities in New York, which the Commission is relying upon to remain in its renewable baseline to meet the 50 by 30 goal, will be committed to sell their attributes to Massachusetts for 15 to 20 years.

To avoid the potential loss of these resources and other Existing Facilities as other states' renewable programs are opened to them, the Commission should reverse its decision and allow all Existing Facilities to be eligible to sell RECs to LSEs to meet the LSE Procurement Obligation the CES. It is important to treat all Existing Facilities equally, given that their role in keeping greenhouse gas emissions low is the same. The value of their RECs to stabilize current carbon emissions today for the system as a whole and to assist the State in meeting its 50 by 30 goal is the same whether or not an Existing Facility is financially distressed. Reducing these

[12] Case 15-E-0302, *supra*, Comments of Brookfield (Apr. 22, 2016), at 4, 15–16. Other parties also demonstrated that Existing Facilities may export to neighboring states if they are not properly valued under the CES. *See, e.g.*, Case 15-E-0302, *supra*, Comments of Alliance for Clean Energy New York et al. (Apr. 22, 2016), at 17–18; Comments of Gravity Renewables Inc. (Apr. 22, 2016), at 5–6; Comments of NRG Energy, Inc. (Apr. 22, 2016), at 15; Comments of ReEnergy Holdings, LLC (Apr. 22, 2016), at 2–3.

emissions is a central purpose of the CES, and the Commission should not lose an opportunity to ensure that the benefit of emission reductions of all Existing Facilities is retained for the benefit of energy consumers and meeting the 50 by 30 goal.

As the Commission recognized, Existing Facilities have likely recovered their capital costs. Therefore, the cost to retain RECs from Existing Facilities in the State is likely to be much lower than the costs to enter into long-term contracts to acquire RECs from new renewable resources under Tier 1. An order on rehearing ruling that Existing Facilities are eligible to participate in the CES program will ensure that existing progress towards the State's 50 by 30 goal is maintained and that associated investment is retained in a viable and sustainable manner in the State.

III. CONCLUSION

For the reasons discussed above, the Commission should grant IPPNY's Petition for Rehearing of the August Order.

Respectfully submitted,

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