



June 19, 2017

**VIA ELECTRONIC FILING**

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza, Agency Building 3  
Albany, New York 12223-1350

Re: Case 15-E-0751 – In the Matter of the Value of Distributed Energy Resources

Dear Secretary Burgess:

The Advanced Energy Economy Institute (AEEI), on behalf of Advanced Energy Economy (AEE), the Alliance for Clean Energy New York (ACE NY), the Northeast Clean Energy Council (NECEC), and their joint and respective member companies, submits for filing these Comments in response to the to the Commission's April 21, 2017, *Notice with Respect to Petitions for Rehearing, Reconsideration and/or Clarification* in the above-referenced proceedings.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ryan Katofsky", with a large, sweeping flourish at the end.

Ryan Katofsky  
Vice President, Industry Analysis

# Comments on the CORE Petition for Rehearing, Reconsideration, and Clarification of the Value of Distributed Energy Resources Order (Case 15-E-0751)

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Advanced Energy Economy Institute  
Alliance for Clean Energy New York  
Northeast Clean Energy Council

## Preface

In order to respond to the Commission’s April 21, 2017 *Notice with Respect to Petitions for Rehearing, Reconsideration, and/or Clarification*, Advanced Energy Economy Institute (AEE Institute) is working with Advanced Energy Economy<sup>1</sup> (AEE) and two of its state/regional partners, the Alliance for Clean Energy New York (ACE NY) and the Northeast Clean Energy Council (NECEC), and their joint and respective member companies to craft the comments below. These organizations and companies are referred to collectively in these comments as the “advanced energy community,” “advanced energy companies,” “we,” or “our.”

## Introduction

Advanced Energy Economy Institute, the Alliance for Clean Energy New York, and the Northeast Clean Energy Council have been supportive participants in the Value of DER proceedings since its inception. We have been active proponents of the Commission’s desire to send more accurate price signals to DER to encourage them to deliver greater value and better support the operations of the grid. As we have stated throughout the Value of DER proceeding, we see pricing that incorporates a comprehensive set of system and societal values as a necessary development that allows a variety of

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<sup>1</sup> AEE is a national business association representing leaders in the advanced energy industry. AEE supports a broad portfolio of technologies, products, and services that enhance U.S. competitiveness and economic growth through an efficient, high-performing energy system that is clean, secure, and affordable. ACE NY’s mission is to promote the use of clean, renewable electricity technologies and energy efficiency in New York State, in order to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. NECEC is a regional non-profit organization representing clean energy companies and entrepreneurs throughout New England and the Northeast. Its mission is to accelerate the region’s clean energy economy to global leadership by building an active community of stakeholders and a world-class cluster of clean energy companies.

technologies to compete on equal footing to deliver customer benefits and help New York reach its important policy goals.

The Coalition of On-Site Renewable Energy Users' (CORE) Petition for Rehearing and Reconsideration ("Petition") addresses an issue that is central to REV and New York State policy goals: how environmental and externality benefits are accounted for and compensated. Accurate accounting and compensation for environmental attributes is necessary to avoid unintended consequences that may run counter to the Commission's good intentions. The Petition lays out a number of issues with the Value of DER Order's<sup>2</sup> treatment of externalities, such as restrictions on Renewable Energy Certificates (RECs), that we believe will negatively impact the development of on-site DER for large customers and severely limit the voluntary market in New York by preventing individuals and companies from claiming the environmental benefits from projects they invest in for their own sustainability goals.

While we agree with and support the Petition in its entirety save for one minor point,<sup>3</sup> our comments only elaborate on a few specific points that are of greatest concern to us.

## Comments on the Petition

### **The Commission Erred by Failing to Properly Account for Voluntary Renewable DER Generation Separate and Apart from the RES Compliance Obligation<sup>4</sup>**

We commend the Commission for taking into account the contribution from both mandatory utility purchases (the Renewable Energy Standard compliance obligation) and voluntary purchases toward the State's overall renewable energy goals. Voluntary purchasers across the country are making significant investments of their own funds to reduce their greenhouse gas emissions, and in the future, their role in driving new renewable development will only increase. The Commission is right in its thinking that the voluntary market should be counted when calculating New York's total renewable generation mix. However, instead of looking at both the voluntary and utility obligation as separate components, the Order counts the voluntary market *toward* the utility obligation, which will drive down the investment of voluntary purchasers in New York and make the State's goals more difficult to reach.

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<sup>2</sup> March 9<sup>th</sup> Order in case 15-E-0751 (or "Value of DER Order")

<sup>3</sup> We do not specifically endorse the idea that the Commission should set a price for environmental attributes in the voluntary market. See CORE Petition page 20. The exceptions to this would be (1) if a state agency is purchasing voluntary RECs or otherwise using them for compliance to a goal [and (2) in circumstances where utilities offer green power tariffs to their customers in which voluntary REC owners do not have the opportunity to compete. This is particularly important where a local generator can fulfill the green customer's requirements in lieu of the utility purchasing out-of-state RECs. In those cases, it would make sense to set a minimum price for the state's own procurement, or provide the voluntary project owner with access to the green tariff REC price.]

<sup>4</sup> CORE petition page 14

The Order establishes two types of voluntary claims associated with DER production. The first is when the customer forgoes compensation from the utility for the “E” credit for externality benefits associated with exported DER production (the “Customer-Retention Option”), and the second is for energy produced and consumed behind the meter that is not eligible for an “E” credit but instead will generate non-tradeable sustainability certificates. In both cases, the order states that the customer can retire the sustainability certificates toward their own goals; however, the production will still count toward the state’s overall Clean Energy Standard (CES) 50x30 goal.<sup>5</sup> The Commission’s Order Establishing a Clean Energy Standard (“CES Order”) provides<sup>6</sup> greater detail on how voluntary claims will be accounted for within the CES. During triennial reviews, staff will calculate the renewable energy contributed by the entire voluntary market in the state and decrease accordingly the Renewable Energy Standard (RES), the portion of the CES goal which must be fulfilled through mandatory utility purchases. The result is that as voluntary market renewable contributions increase, utilities will decrease their renewable purchases, thereby offsetting the contributions of the voluntary market. In effect, voluntary market contributions will replace, rather than add to, utility purchase requirements.

Voluntary purchasers are driven by their desire to reduce greenhouse gas emissions associated with powering their operations. Therefore, they strive to buy renewables that would not have otherwise come onto the system without their actions. This ensures that their investments are having the intended effect of producing real reductions in greenhouse gas emissions. The Commission’s policies to decrease the RES commensurate with voluntary market growth fundamentally threaten the driving force of the voluntary market. While we focus our comments here on voluntary claims associated with DER production, which is the subject of this petition, we believe these same arguments hold true for all voluntary renewable purchases, whether they are private power purchase agreements or voluntary purchases of renewables by retail customers from utilities or energy service companies.

Consider the decision before a customer that is considering installing on-site solar and intends to retain all environmental attributes in order to make a voluntary sustainability claim. The customer can either install the solar and then retain the certificates<sup>7</sup> from the generation, in which case the utility RES obligation will be lowered by a compensating amount during the triennial review, or make no investment, in which case the utility obligation will stay the same. Either way, the same amount of new renewables comes on line. Having no ability to create truly additional renewable energy through an investment, a

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<sup>5</sup> “[T]he generation attributes of all renewable resource generation consumed by customers in New York State will contribute towards the Statewide 50% by 2030 renewable resources goal, which relies on both mandatory and voluntary contributions for its ends to be achieved.” Proceeding 15-E-0751, Value of DER Order, page 67.

<sup>6</sup> 15-M-0302. CES Order, Page 118

<sup>7</sup> These are the environmental and sustainability certificates described in the Value of DER Order rather than RECs. They are non-tradeable or sellable and can only be retired in the originating customer’s account per the Order.

prospective voluntary market participant may make no investment at all or may do so out of state (where it would receive RECs with clear additionality that can be monetized or retired).

As a result of this intermingling of voluntary purchases and utility obligations, many voluntary purchasers would be unable to claim credit for the sustainability certificates granted in the Value of DER Order under their own policies and national standards. For example, in 2013, the Staff of the Arizona Corporation Commission (ACC) proposed a new system for compliance with the state's Renewable Energy Standard and Tariff (REST) called "Track and Record" that bears strong resemblance to the policies adopted by the NY PSC. Under Track and Record, the kWh production from DER would not be directly claimed by the utilities for compliance, but instead would be used to reduce the utilities' obligation to purchase renewables. The Arizona Staff intended for project owners to retain their RECs for sale and retirement, but the Center for Resource Solutions (CRS) told the ACC in a letter<sup>8</sup> that it would not be able to certify any RECs from distributed generation in Arizona covered by Track and Record as Green-e compliant. CRS claimed that using the kWh generated by DG to reduce utility compliance obligation without compensating the DG owner amounts to a regulatory taking and risks double counting. CRS stated:<sup>9</sup>

"Any proposal intended to give utilities credit for RECs they do not own constitutes a claim on the REC. Such credit may be in the form of a waiver of compliance obligation and does not need to be a formal counting of the REC itself. If the underlying kWh is being used to reach or modify a compliance obligation, then the value of the REC is being taken by the utility, and according to Green-e Energy rules, any other use of the REC would constitute double counting."

In the same proceeding, the Environmental Protection Agency (EPA) asked<sup>10</sup> the ACC not to approve the Track and Record proposal because it would prevent participants in its nationwide voluntary renewables program – the Green Power Partnership – from making environmental claims on the energy they produced. The EPA also said that it would need to revise its program standards to remove the eligibility of any renewable electricity generated from DG systems in Arizona if Track and Record were adopted. The Department of Defense (DoD), intervening on behalf of all Federal Executive Agencies (DoD/FEA), opposed Track and Record raising similar taking concerns and risks of double counting. Federal Agencies, the DoD stated, would not be able to claim the RECs from their renewable facilities under Track and Record and would forfeit progress toward Federal renewable goals and also a significant

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<sup>8</sup> Arizona Corporation Commission Docket E-01345A-10-0394. Letter from Center for Resource Solutions Executive Director Jennifer Martin to the Commission, dated May 31, 2013. Also available at: <https://resource-solutions.org/wp-content/uploads/2015/07/CRS-Letter-to-ACC-DG-REC-5-31-13.pdf>

<sup>9</sup> *Ibid*, p.4

<sup>10</sup> Arizona Corporation Commission Docket E-01345A-10-0394. Letter from the Environmental Protection Agency. Filed July 24, 2013.

portion of the benefit from taxpayer-funded renewable facilities.<sup>11</sup> In filed testimony, a witness for DoD/FEA stated:<sup>12</sup>

“The KWhs [sic] produced by the customers used to meet the REST rules, either in the form of direct compliance, or in the form of reducing the compliance burden on the utilities, are thus counted, the associated RECs could not be used by the customer for any commercial or compliance purpose without encountering a double counting problem, and customers would be deprived of a significant portion of the investment they have made in renewable energy.”

The ACC ultimately rejected the Track and Record proposal, but the proceeding provides a substantial body of commentary from diverse parties opposing what is at its core a mechanism for accounting for environmental attributes that is very similar to the one put in place in New York through the Value of DER and CES Orders. Track and Record made no official claim to the RECs from distributed generation in Arizona, but it did allow utilities to record distributed generation on their system and reduce their REST compliance obligation by the same amount. The CES order makes clear that the amount of renewables procured in the voluntary market will be counted up, and the total will be used to reduce the utility RES obligation during triennial reviews. Those same parties that opposed Track and Record in Arizona would likely oppose the use of the voluntary market to reduce the RES for the very same reasons, were they engaged in this proceeding.

If voluntary renewable investment is significantly reduced by this policy, it represents a missed opportunity for New York. Without voluntary activity, there will be no decrease in the RES and no associated cost reductions to utility customers that the Commission may be targeting with this policy. Without the voluntary market, utility compliance with the RES will account for all of the CES obligation and the state will lose out on additional renewable generation that could have come on line had the voluntary market not been dissuaded from participating. An easy way to solve this is to make the RES completely independent from voluntary market contributions as CORE recommends. This is how most state renewable portfolio standards work, including California’s 50% by 2030 mandate. Using this methodology, the RES would be a fixed percentage, and anything the voluntary market provides above that would be truly additional. The benefit is that the voluntary market can truly contribute additional renewables, and New York can exceed 50% with voluntary market and RES contributions combined. As it stands now, the 50% CES serves not as a floor but as a cap, where voluntary market contributions only serve to replace RES contributions until the 50% is achieved.

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<sup>11</sup> Arizona Corporation Commission Docket E-01345A-10-0394. Closing Brief of the Department of Defense and Federal Executive Agencies. Filed Aug 22, 2013.

<sup>12</sup> Arizona Corporation Commission Docket E-01345A-10-0394. Corrected Surrebuttal Testimony of Cynthia Cordova filed on May 28 on behalf of the Department of Defense and all Federal Executive Agencies.

## **A Project's Environmental Attributes are the Property of the Project Owner/User<sup>13</sup>**

We appreciate that the Commission has created a reasonable avenue for compensating project owners for the environmental attributes they provide from their exported energy through the “E” credit from the utility. If the project owner receives compensation for “E,” the Order justly requires the owner to relinquish any claim to the environmental attributes associated with their exported energy. However, for any DER production that is not compensated with the “E” credit, whether that production is consumed behind the meter or excluded from eligibility for the E credit through the project owner’s election of the Customer-Retention option, the project owner should retain full and exclusive rights to the environmental attributes and be able to retire, sell, or swap them according to their own interest.

As CORE established in its petition, environmental attributes are the property of the project owner. Absent participation in a program that compensates the project owner in some form for the environmental attributes, the project owner retains ownership of them. The Value of DER Order makes very clear which environmental attributes are eligible for compensation (those kWh associated with exported production from DER that are being paid under the Value Stack, where the owner has not chosen the Customer-Retention option) and those that are not eligible for compensation (those kWh associated with all other DER production, whether under Value Stack or Net Energy Metering). These bright lines in the Order, which clearly define the environmental attributes that are relinquished in exchange for compensation, also serve to define which environmental attributes remain in full possession of the project owner.

As a practical matter, the Commission should consider that some project owners may assert their rights to the remaining environmental attributes and sell them via bilateral contract or convert them into tradeable RECs through a national exchange, such as the North American Renewables Registry. If this takes place, the environmental attributes would be retired and accounted for out of state, and measures would need to be taken so that the CES is not double counting these attributes.

In order to avoid this problem, the Commission should direct NYSERDA and New York Generation Attribute Tracking System (NYGATS) to issue fully tradeable RECs for the attributes that are not compensated for in the Phase One Tariff. This would allow project owners to sell their RECs to buyers and fully monetize the environmental attributes of their system. If, instead, the Commission would like to provide an avenue to ensure the RECs stay in state, NYSERDA could purchase them at a price it is willing to pay and resell them to utilities for their RES obligation.

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<sup>13</sup> CORE Petition, Page 4

## **Environmental Attributes Associated with DER Production Consumed Behind the Meter**

The CORE petition states that the Order erred by denying “behind the meter project owners the rights to claim, register or trade RECs associated with energy that is consumed on site and not exported to the system.”<sup>14</sup> We support this position in the event that the Commission chooses not to provide “E” compensation for DER generation that is produced and consumed behind the meter.

As we argued in our comments on the Staff Value of DER proposal, non-exported generation should be eligible for the same compensation as exported generation since all DER generation has the same environmental benefit, regardless of whether it is consumed on-site or exported beyond the meter. In both cases, it offsets grid energy with its associated fuel mix and emissions. Retail rates do not include the full value of emissions-free generation, and so the avoidance of the retail rate through self-consumption undercompensates project owners for the value they provide. In the event that the Commission decides not to change its determination that only the environmental attributes associated with exported energy should be eligible for compensation under the Phase One Tariff, the Commission should provide tradeable and Tier 1 eligible RECs for the reasons described in the section above.

## **Ability of Pre-Existing Projects to Participate in RES Tier 1 Solicitations**

CORE notes that while the Commission appropriately allows projects that came on line prior to its March 9th order (“Pre-Existing Projects”) to participate in the RES Tier 1 Solicitations, the exclusion of Pre-Existing Projects with Customer Sited Tier (CST) funding is problematic. We agree with CORE that Pre-Existing Projects with CST funding should not be excluded since CST funding is relatively small compared to the value of a REC and makes up a small percentage of the financing for a project. Additionally, the NYSERDA contract for CST funding does not prohibit the sale of RECs so long as they remain in state.<sup>15</sup> Given this history, the Phase One Order creates a significant policy shift for Pre-Existing Projects with CST funding and eliminates a source of revenue that was assumed to exist when the projects were initiated. Allowing these projects to participate is appropriate given that they are largely privately funded and they and their customers’ expectations of participation were reasonable at the time given past Commission policies.

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<sup>14</sup> CORE Petition, Page 2

<sup>15</sup> CORE Petition, Page 8



## Conclusion

We appreciate the opportunity to comment on the Petition. We maintain that the Petition's recommended changes to the Order's treatment of environmental attributes will avoid potential implementation problems and help the state meet its policy goals.