

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission to  
Implement a Large-Scale Renewable Program  
and a Clean Energy Standard

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Case 15-E-0302

**NOBLE ENVIRONMENTAL POWER LLC COMMENTS ON STAFF REPORT  
REGARDING RETENTION OF EXISTING BASELINE RESOURCES UNDER TIER 2  
OF THE RENEWABLE ENERGY STANDARD PROGRAM**

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On October 19, 2017, Department of Public Service Staff (“Staff”) filed its *Report Regarding Retention of Existing Baseline Resources Under Tier 2 of the Renewable Energy Standard Program* (the “Tier 2 Report”) as part of the New York State Public Service Commission’s (the “Commission”) ongoing review of its Renewable Energy Standard program.<sup>1</sup> Thereafter, the Commission Secretary issued a notice seeking comments on the recommendations included in the Tier 2 Report.<sup>2</sup> Noble Environmental Power LLC (“Noble”) hereby respectfully submits the following comments on the Tier 2 Report.<sup>3</sup>

**I. EXECUTIVE SUMMARY**

Noble respectfully requests that the Commission:

- Reject Staff’s recommendations in the Tier 2 Report;
- Recognize the emissions-free attributes generated by existing renewable energy resources within the State;

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<sup>1</sup> Case 15-E-0302: *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, CES Tier 2 Report (Filed Oct. 19, 2017).

<sup>2</sup> Case 15-E-0302, *supra*, Notice Soliciting Comments on Staff Report Regarding Retention of Existing Baseline Resources Under Tier 2 of the Renewable Energy Standard (Issued Oct. 20, 2017).

<sup>3</sup> In association with the comments made herein, Noble incorporates all previous comments made by it and other parties in this proceeding.

- Compensate existing renewable energy resources for those attributes on par with other similarly situated generation resources;
- Allow load-serving entities to purchase RECs from Tier 2 resources; and
- Allow all of a repowered facility’s emissions-free attributes to be eligible for purchase under the Renewable Energy Standard (“RES”) program.

## **II. INTRODUCTION**

Noble, through certain of its affiliate companies, owns and operates six wind energy projects throughout New York State (the “Noble Projects”). The Noble Projects generate 612 megawatts (“MW”) of electricity that is supplied to the New York Independent System Operator (“NYISO”) markets for capacity, energy, and ancillary services. Two of the Noble Projects are in Wyoming County in western New York, approximately 45 miles east of Buffalo and equidistant between the Province of Ontario and the Commonwealth of Pennsylvania. The remaining four projects are in the North Country (Clinton and Franklin Counties) near the Vermont and Quebec borders.

Noble is the largest wind generator in New York, directly employs approximately 40 people, and makes significant contributions to state, regional, and local economies, with over \$100 million in taxes and land royalty payments made since commercial operations began in 2008-2009.<sup>4</sup> Each of the Noble Projects is party to a 10-year contract (the “NYSERDA Contracts”) with the New York State Energy Research and Development Authority (“NYSERDA”) for the sale of approximately 95% of its renewable energy attributes. Most of the remaining 5% of energy and attributes not covered by the NYSEDA Contracts is sold into the ISO New England, Inc. (“ISO-NE”) markets.

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<sup>4</sup> Noble’s payments to landowners are calculated, in part, with reference to revenues received by the Noble Projects under the NYSEDA Contracts.

Between 2018 and 2019, the NYSERDA Contracts for all of the Noble Projects will expire. Although Noble acknowledges that Staff is recommending expansion of Tier 2 eligibility to existing renewable resources, the Tier 2 Report once again fails to appropriately value the environmental attributes generated by the Noble Projects. In the absence of longer term agreements with NYSERDA that appropriately recognize the value of these emission-free attributes, it is likely that Noble will sell its generation to ISO-NE when the NYSERDA Contracts expire.

### **III. RELEVANT PROCEDURAL HISTORY**

On August 1, 2016, the Commission issued an Order Adopting a Clean Energy Standard, which established the RES program.<sup>5</sup> The RES consists of a statewide goal that 50 percent of all electricity consumed in the State be secured from renewable energy by 2030.<sup>6</sup> Under the RES program, all load-serving entities (“LSEs”) in the State are required to financially support new renewable generation resources, or Tier 1 resources, by purchasing environmental attributes from those new resources to serve their retail customers.<sup>7</sup> Despite Staff’s initial recommendation that LSEs should also be obligated to purchase attributes from existing renewable resources that are eligible to compete in other states’ renewable energy programs at the end of their 10-year contracts with NYSERDA, or Tier 2a resources, the Commission chose not to recognize the renewable attributes generated by these facilities.<sup>8</sup> Instead, the Commission came to the conclusion that such facilities, primarily existing wind facilities, “have all likely already recovered all or most of their initial capital costs and only need to obtain market revenues

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<sup>5</sup> Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (Issued Aug. 1, 2016) (the “CES Order”).

<sup>6</sup> CES Order at 2-6, 76.

<sup>7</sup> CES Order at 78.

<sup>8</sup> Case 15-E-0302, *supra*, Staff Whitepaper on Clean Energy Standard (Filed Jan. 25, 2016), at 22; CES Order at 116.

sufficient to fund their comparatively low, going-forward operation and maintenance costs”<sup>9</sup> and, for this reason, chose not to offer additional or new incentives for these facilities to supply their attributes into the NYISO market. As a result, the CES Order fails to recognize or account for the value that existing renewable resources will provide in reaching the State’s 2013 RES goals.

In response to the CES Order, a number of renewable generators filed petitions for rehearing or reconsideration to encourage the Commission to reconsider its position with respect to existing renewable resources.<sup>10</sup> On December 15, 2016, the Commission denied these petitions for rehearing, but noted that “it is in the best interests of electric consumers to retain existing renewable resources, provided that the cost of retention is less than the cost to replace them with new facilities under the Tier 1 REC program.”<sup>11</sup> As a result, the Commission directed Staff to review and prepare potential recommendations for changes to Tier 2 of the RES. In its review, Staff was instructed to consider the following factors: (a) consumer costs; (b) changes in eligibility criteria; (c) financial hardship; (d) facility locational considerations; (e) and program options.<sup>12</sup>

On October 19, 2017, Staff issued the Tier 2 Report with its recommendations for modification of Tier 2 of the RES.<sup>13</sup> In particular, Staff recommends revising the eligibility criteria to permit facilities that were in operation prior to January 1, 2015; increasing the size threshold for hydroelectric facilities from 5 MW up to 10 MW; modifying the “to-go-cost” standard for facility demonstrations of financial need; creating two separate categories of review (streamlined or detailed) based on a facility’s need; establishing a standard contract term of three

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<sup>9</sup> CES Order at 115.

<sup>10</sup> See Case 15-E-0302, *supra*, petitions filed by Brookfield Renewables Energy Group, ReEnergy Holdings LLC, H.Q. Energy Services (U.S.) Inc., Alliance for Clean Energy New York, and Ampersand Hydro LLC.

<sup>11</sup> Case 15-E-0302, *supra*, Order on Petitions for Rehearing (Issued Dec. 15, 2016), at 14.

<sup>12</sup> *Id.* at 15.

<sup>13</sup> Tier 2 Report.

years for Tier 2 awards, with a renewal option; and continuing to explore opportunities for voluntary markets.<sup>14</sup> According to Staff’s recommendations in the Tier 2 Report, although existing resources will now be eligible to participate in the Tier 2 maintenance tier, that eligibility will be limited to compensating generators only for their ongoing operations and maintenance costs and will provide no rate of return. Further, Staff’s proposal will not allow existing resources to receive any return for depreciation, debt service costs, or a return on equity. Quite simply, this proposal provides no incentive for existing resources to continue to provide their attributes into the NYISO market.

On October 20, 2017, the Commission Secretary issued a notice seeking comments on the Tier 2 Report.<sup>15</sup> Noble hereby respectfully submits the following comments.

#### **IV. COMMENTS**

##### **A. The Tier 2 Report Fails to Adequately Value Existing Renewable Resources**

It is inconsistent with the New York State Public Service Law and the principles of electric regulation, long practiced by this Commission, not to pay the established value per MWh for attributes created by producing electricity without carbon emissions (“Non-emitting Power Attributes”) to all power generators that produce them, without undue discrimination or preference. The Staff recommendations in the Tier 2 Report fail to do so. Instead, Staff recommends “to-go-cost” calculations that are unjustly discriminatory and unduly preferential compared with the incentives being provided to similar renewable resources, for the exact same products, under Tier 1.<sup>16</sup> However, there is no distinguishable difference between the MWhs of

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<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> Case 15-E-0302, *supra*, Notice Soliciting Comments on Staff Report Regarding Retention of Existing Baseline Resources Under Tier 2 of the Renewable Energy Standard (Issued Oct. 20, 2017).

<sup>16</sup> Compare the pricing established for Tier 1 resources in the CES Order with the proposed calculations provided in the Tier 2 Report.

carbon-free electricity generated by a new resource and those generated by an existing resource – each ensures that New Yorkers are receiving electric power free from carbon emissions.

Neither the Tier 2 Report nor the CES Order provides any reasonable explanation, justification, or evidentiary basis for the discrepancy in proposed valuation of these same resources. Rather, the Commission appears to reconcile its position with the purely conclusory statement that existing facilities have “recovered all or most of their initial capital costs and only need to obtain market revenues sufficient to fund their comparatively low, going-forward operation and maintenance costs.”<sup>17</sup> These assumptions are not only flawed and incorrect, but also ignore the threshold issue that existing generators will not be compensated on par with new resources. Indeed, the NYSERDA Contracts will all expire in roughly the next year at the conclusion of their 10-year term, only one-third<sup>18</sup> of the way through the Noble Projects’ expected life cycles, whereas new resources will be compensated for a 20-year term. Further, many existing resources will no longer be eligible to receive federal production tax credits in the near term, and, as a result, would actually need a *higher* avoided cost payment to be on par with the value being provided to newer resources.

As explained in further detail in Point IV.B below, the CES Order adopted certain pricing mechanisms to compensate nuclear facilities and new renewable resources for the respective zero-emission credits (“ZECs”) and RECs they generate. Despite providing the same environmental benefits as these nuclear and new generation resources, these existing renewable resources are treated differently, and are not provided with the same incentives or compensation. Since the Commission has established pricing for the value of Non-emitting Power Attributes

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<sup>17</sup> CES Order at 115.

<sup>18</sup> This assumes sufficient ongoing investment and maintenance of these resources, which would extend their anticipated life expectancy.

generated within the State, it is arbitrary and capricious and not the result of reasoned decision-making for the Commission to withhold that price from existing renewable resources.

**B. Existing Resources Should Be Compensated the Same as Other Similarly-Situated Generation Resources**

In the CES Order, the Commission recognized the zero-emission attributes generated by nuclear resources within the State had historically made “a significant verifiable contribution to New York State’s clean energy resource mix as consumed by New Yorkers” and that without the Non-emitting Power Attributes from these nuclear resources, the State could not realistically expect to meet its RES goals.<sup>19</sup> These recognized contributions to emissions-free generation led the Commission to establish the nuclear-tier and administrative price for ZECs.<sup>20</sup> The same rationale for supporting nuclear facilities also applies to existing renewable resources.

The Noble Projects have generated Non-emitting Power Attributes since coming on line in 2008-09. Because the administrative ZEC price (currently set at \$17.54 per MWh and up for determination in March 2018)<sup>21</sup> is similar to the recently announced NYSERDA CES price for 2018 (\$17.01),<sup>22</sup> ZEC-like payments to the Noble Projects would also be expected to be similar to payments to a new resource. Further, Staff’s calculations for meeting the RES goals assume that the Noble Projects will be on-line, generating Non-emitting Power Attributes that will be counted in the RES baseline. Failure to retain the Noble Projects and other existing resources as in-state renewable resources will put the State’s ability to meet its RES goals in serious jeopardy. Noble understands that there are significant distinctions between its projects and the nuclear facilities. However, as contributors to the RES goals, each contributes in exactly the same way

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<sup>19</sup> CES Order at 125.

<sup>20</sup> ZEC are priced at \$17.48/MWh, escalating over the 12-year term of the program, with a “claw-back” in the event that capacity and energy market prices exceed a cap.

<sup>21</sup> NYSERDA, *2017 Compliance Year*, <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Standard/REC-and-ZEC-Purchasers/2017-Compliance-Year>.

<sup>22</sup> NYSERDA, *2018 Compliance Year*, <https://www.nyserdera.ny.gov/All-Programs/Programs/Clean-Energy-Standard/REC-and-ZEC-Purchasers/2018-Compliance-Year>.

on a MWh basis by generating energy without carbon emissions. There is no just and reasonable basis for compensating one provider of Non-emitting Power Attributes over all others. To treat these resources differently, despite their commensurate value to achieving the State’s RES goals, is arbitrary and capricious and amounts to the Commission artificially and discriminatorily selecting winners and losers.

As stated above, Non-emitting Power Attributes generated by the Noble Projects are not qualified under the existing RES rules to be purchased by LSEs, rather only Non-emitting Power Attributes from “new” resources, are eligible for purchase.<sup>23</sup> However, although the Non-emitting Power Attributes generated by such existing renewable energy resources are not eligible for purchase in the RES, the carbon-free energy produced by such facilities is the same as that produced by other generators that are eligible for compensation, in the form of Tier 1 RECs and ZECs, under the RES for the value of electricity produced without carbon emissions. Since New York has determined two reasonably similar long-term prices for Non-emitting Power Attributes, it is arbitrary and capricious and not the result of reasoned decision-making for the Commission to provide that price to certain renewable energy resources while withholding it from existing renewable energy resources. Indeed, the Noble Projects are particularly short-changed under the CES Order and Tier 2 Report’s approach, because they were only paid for 10 years (rather than the current 20-year term) for 95% of their Non-emitting Power Attributes.

### **C. Adopting the Recommendations in the Tier 2 Report Will Force Noble to Leave the New York Market**

In the Tier 2 Report, Staff recommends that the Commission apply a “to-go-cost standard” for valuing the Non-emitting Power Attributes generated by existing renewable

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<sup>23</sup> Inexplicitly, “new” units also include generators which began commercial operations in 2015 and 2016, even though they are not “induced” to enter the New York market by the CES Program any more than the Noble Projects were.

resources.<sup>24</sup> According to Staff, this is appropriate because “[t]he Commission intentionally established the maintenance category as a way to provide short term assistance in order to help facilities through difficult financial times in their operations, at a level “just sufficient for the owner, or its financial supporters, to continue to operate the facility. It was not intended to ensure a facility’s profitability or a continued return for the facility owner or its investors.”<sup>25</sup> But this statement misconstrues the purpose of the RES program – to value and compensate generators for their Non-emitting Power Attributes; nothing more, nothing less. As a result, for the very same resource that generates a Tier 1 REC, the Tier 2 Report improperly categorizes Tier 2 compensation as some sort of windfall to existing generators. In fact, Staff’s proposal will have the opposite effect. If the Commission adopts the “to-go-cost standard” espoused in the Tier 2 Report, existing resources will be forced to leave the State altogether because the only other purported alternative is to continue supplying Non-emitting Power Attributes in New York at or below existing operating costs resulting in a windfall to parties who have not paid for those Non-emitting Power Attributes, which is really no alternative at all.

No other options exist for the Noble Projects to receive value for their emissions free electric power because no liquid market has been developed for purchase and sale of Non-emitting Power Attributes from existing wind farms in New York, meaning there is no reasonable certainty that these Non-emitting Power Attributes can reliably be sold in New York upon expiration of the NYSERDA Contracts. NYSERDA has acknowledged as much, stating that, “[i]t is inevitable that in the absence of a New York policy stimulating demand that creates sufficient value for [existing resource’s] RECs, the energy and RECs from some or all of these

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<sup>24</sup> Tier 2 Report at 14.

<sup>25</sup> *Id.*

resources are likely to leave the market.”<sup>26</sup> Staff also previously recognized this significant problem in its January 25, 2016 report to the Commission that a competitive sub-tier is necessary to “provide sufficient revenue to attract supply for which New York must compete with other states, and may be critical to keeping all or most of the supply rolling off NYSERDA Main Tier projects from seeking higher revenues for provision to RECs in neighboring markets.”<sup>27</sup> To make it clear, since the alternative is to sell power in the NYISO market at prices that provide little or no return to existing generators and do not at all value their environmental attributes, any reasonable regional price is likely to be attractive to existing resources without NYSERDA Contracts. In the event no such alternative is available, it is New York State, not the existing resources that will receive an unbargained-for windfall. Forcing the Noble Projects to choose between operating at cost, or leaving the State, leaves Noble with no choice at all. Thus, Noble will be forced to sell its power and Non-emitting Power Attributes in the ISO-NE markets if the Commission adopts Staff’s recommendations in the Tier 2 Report.

Noble anticipates that other existing renewable resources will similarly be forced to flee the New York market for other states that will properly value their Non-emitting Power Attributes. Although Staff and the Commission routinely discredit this argument as “speculative,” this situation has already begun occurring as noted in NYSERDA’s LSR Report,<sup>28</sup>

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<sup>26</sup> Case 15-E-0302, *supra*, Large-Scale Renewable Energy Development in New York: Options and Assessment (Filed June 1, 2015), at 29 (the “LSR Report”).

<sup>27</sup> Case 15-E-0302, *supra*, Staff White Paper on Clean Energy Standard (Filed Jan. 25, 2016), at 23.

<sup>28</sup> LSR Report at 114-15 (reporting that 19.9 percent of Massachusetts 2013 REC requirements were met by New York resources and noting that those figures continue to rise). In particular, NYSERDA notes that:

“[i]n the absence of any New York policy that would create material value for these resources, owners of Legacy LSR projects are already looking to other markets. Energy and associated RECs from New York projects under contract to NYSERDA, but above and beyond the quantities purchased by NYSERDA, are already being exported to New England. And while available space on existing transmission interconnections between New York and New England is insufficient to reliably accommodate export of the entire Legacy LSR fleet’s production, independent transmission developers are planning new ties to enable

and will most certainly continue as NYSERDA's contracts with the vast majority of the State's existing renewable generation is scheduled to expire, leaving those resources no choice but to look to other markets.<sup>29</sup>

Unfortunately, it appears the Commission is content to see existing renewable generators export their Non-emitting Power Attributes to other states because the Commission is counting on those resources to return to the New York market at a later date if needed. Indeed, the Commission admitted as much in the CES Order, stating:

“The facilities that Staff proposes to classify under Tier 2a have all likely already recovered all or most of their initial capital costs and only need to obtain market revenues sufficient to fund their comparatively low, going-forward operation and maintenance costs. These are primarily wind generation facilities that have no fuel costs unlike other large scale electric generation facilities and should be profitable even under today's lower market prices for energy and capacity. While it may be possible that some of these facilities will sell their clean energy attributes into other states, given vintage and delivery requirements in other states it remains merely hypothetical that there will be a mass flight of these resources. Therefore, at this time, there is no imminent risk of losing the emission attributes associated with these facilities permanently and no concomitant need to provide them with additional New York consumer support for those emission attributes. In the event that significant out-of-state sales occur to the detriment of the RES program, the Commission will reconsider

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more of this work to occur, working with and attempting to subscribe generators to fund the lines. Although some portion of the Legacy LSR production could find a home in New York's voluntary market, as discussed in Section 9.2, the scale of that market is a small fraction of the volume of Legacy LSR production, at best. Given these observations, it is inevitable that in the absence of a New York policy stimulating demand that creates sufficient value for Legacy LSR RECs, the energy and RECs from some or all of these resources are likely to leave the market.

*Id.*  
<sup>29</sup> See Massachusetts Renewable & Alternative Energy Portfolio Standards RPS & APS ANNUAL COMPLIANCE REPORT FOR 2013, Dec. 17, 2014 (available at <http://www.mass.gov/eea/docs/doer/rps-aps/rps-aps-2013-annual-compliance-report.pdf>), *contra* Massachusetts Renewable & Alternative Energy Portfolio Standards RPS & APS ANNUAL COMPLIANCE REPORT FOR 2015, Oct. 10, 2017 (available at <https://www.mass.gov/files/documents/2017/10/10/FINAL%20RPS-APS%202015%20Annual%20Compliance%20Report%20101017.pdf>) (demonstrating that between 2013 and 2015, more than 18,000 additional MWhs of renewable attributes were exported to ISO-NE).

the need to compete for these resources in one of the triennial reviews prior to 2030. The Tier 2a concept is not adopted.”<sup>30</sup>

Simply put, the Commission is engaging in such discriminatory and unduly preferential treatment because it recognizes that existing resources have “steel-in-the-ground” and limited options to be fairly compensated for their renewable attributes. Essentially, the Commission is willing to gamble that it will retain just enough generation from existing resources and encourage development of enough new renewable resources to meet its 50 by 30 goal. This puts the State in a very precarious position with respect to meeting its clean energy goals given that new generation takes years to come on-line and, in many cases, must overcome substantial and time-consuming permitting and regulatory barriers for approval, and that the baseload generation calculations relied on by the Commission in the CES Order as part of the 2014 baseline require the State to retain its existing renewable resources. For example, Noble’s projects account for 612 MWs of the 1,461 MWs of wind generation operating in New York State as of summer 2015, which amounts to nearly 41% of the current wind generation in the State.<sup>31</sup> Should a significant portion of the State’s existing resources look to markets in other states as expected, the Commission will have to recalculate the amount of new generation needed to meet the 50 by 30 goal, which will result in either greater expense to ratepayers, or failure to achieve the State’s goals.<sup>32</sup>

In fact, NYSERDA’s recent filing for the second phase of RES implementation demonstrates that the State is already behind schedule in meeting those goals (the “Phase 2

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<sup>30</sup> CES Order at 115-16 (emphasis added).

<sup>31</sup> CES Order, Appendix G, at 20-21.

<sup>32</sup> See Case 15-E-0302, *supra*, Policies to Cost-Effectively Retain Existing Renewables in New York (Filed Dec. 22, 2017), at 1, 2, 6, 10-12, 15 (noting that significant backsliding of the current RES baseline is likely to occur when NYSERDA contracts awarded to existing renewable energy resources expire).

Plan”).<sup>33</sup> According to the Phase 2 Plan, NYSERDA recommends significantly reducing LSE obligations over the next four years compared to what was initially projected in the CES Order,<sup>34</sup> as demonstrated by the following:

**Comparison of Annual LSE Tier 1 Obligation -  
CES Framework Order to application of the Commission’s November 2016  
Clarification Order reflected in the Phase 2 Proposal**

<u>Year</u>	<u>CES Framework Order</u>	<u>Nov 17, 2016 Clarification Order</u>	<u>Phase 2 Proposal</u>
2017	0.6%	0.035%	---
2018	1.1%	---	0.15%
2019	2.0%	---	0.78%
2020	3.4%	---	2.84%
2021	4.8%	---	4.20%

Although the Phase 2 Plan purports not to impact the “overall RES 50% by 2030 goal,” this assertion ignores the practical difficulty the RES program will face if baseline resources are not maintained meaning that incremental new renewable energy generation will have to be built, at significant expense to ratepayers, to account for those losses.<sup>35</sup> In addition, the Phase 2 Plan’s assertion glosses over the fact that the State has experienced recent difficulty in meeting its energy goals,<sup>36</sup> including those under the previous “Renewable Portfolio Standard” (“RPS”) program.<sup>37</sup> Further, this issue may be further exacerbated by the length of time it takes a major

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<sup>33</sup> Case 15-E-0302, *supra*, Final Phase 2 Implementation Plan (Filed Dec. 18, 2017), at 6 (decreasing LSEs’ REC obligations over the next four years based on the amount of renewable generation that is actually available for purchase in the State).

<sup>34</sup> Phase 2 Plan at 6.

<sup>35</sup> Case 15-E-0302, *supra*, Policies to Cost-Effectively Retain Existing Renewables in New York (Filed Dec. 22, 2017), at i-iii.

<sup>36</sup> See Marie J. French, *Challenges Loom for Cuomo’s Environmental Promises*, Politico, Dec. 7, 2017, <https://www.politico.com/states/new-york/albany/story/2017/12/07/challenges-loom-for-cuomos-environmental-promises-135419> (stating that some of the State’s environmental goals are in danger of not being realized); Marie J. French, *Slow Pace of Energy Efficiency may Imperil Cuomo’s Green Goals*, Politico, Dec. 14, 2017, <https://www.politicopro.com/states/new-york/albany/story/2017/12/14/slow-pace-of-energy-efficiency-may-imperil-cuomos-green-goals-144994> (same).

<sup>37</sup> NYSERDA, *New York State Renewable Portfolio Standard – Annual Performance Report*, March 2017, <https://www.nysERDA.ny.gov/-/media/Files/Publications/Energy-Analysis/RPS/2017-RPS-annual-report.pdf>, at 7

generation facility to navigate the siting process in the State, which according to the general counsel for the PSC is “a five-year process,”<sup>38</sup> meaning that New York State may find it difficult to approve enough significant new generation in time to meet the State’s 2030 energy goals.

A recent report filed by the Alliance for Clean Energy New York clearly demonstrates the need to maintain existing renewable energy resources in the State.<sup>39</sup> According to the Cost-Effective Retainment Report, in the absence of proper valuation for their Non-emitting Power Attributes, existing resources will likely export their attributes to other states once their NYSEERDA contracts expire.<sup>40</sup> If this occurs, “[r]eplacing the 2.1 TWh of increased likely REC exports to New England in 2019 with new wind generation would require more than 725 MW of new resources” along with “another 1.7 TWh of Tier 1 resources by 2023,” which is equivalent to siting and constructing about 1,300 MW of new wind by 2023” at an additional cost in the “\$115 million” range.<sup>41</sup> As previously discussed above, New York will already have a difficult time meeting its 2030 energy goals given regulatory restrictions in siting new generation. Further backsliding of the existing renewable baseline will only exacerbate that issue.

#### **D. LSE’s Should be Allowed to Purchase RECs from Existing Renewable Energy Resources**

At the time Noble entered into the NYSEERDA Contracts, the Commission’s prevailing theory in establishing a 10-year term was that a voluntary market would eventually emerge for the purchase of RECs and no further incentives would be needed to compensate generators for

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(noting that, for the period between 2004 and 2015, overall progress in achieving solicitation targets is less than 50 percent).

<sup>38</sup> Marie J. French, *Renewables Siting Defense*, Oct. 13, 2017, <https://www.politico.com/states/new-york/tipsheets/politico-new-york-energy/2017/10/13/renewables-siting-defense-008823>.

<sup>39</sup> See generally Case 15-E-0302, *supra*, Policies to Cost-Effectively Retain Existing Renewables in New York (Filed Dec. 22, 2017) (the “Cost-Effective Retainment Report”).

<sup>40</sup> Cost-Effective Retainment Report at 10-11.

<sup>41</sup> Cost-Effective Retainment Report at 11. The \$115 million figure assumes a \$30 REC price in 2023.

their Non-emitting Power Attributes.<sup>42</sup> Unfortunately that market has yet to materialize and will only be further suppressed by the current RES program that only incentivizes LSEs to purchase RECs from new renewable resources.<sup>43</sup> Therefore, to support and encourage existing renewable resources to continue selling their attributes in the State, Noble respectfully submits that, in addition to compensating those resources on par with similarly-situated generation sources, the Commission should create a market for Tier 2 resources by allowing LSE's to purchase attributes from existing renewable generators. This approach would help to ensure that the State maintains its existing baseline of renewable resources, which is critical towards the State achieving its 50 by 30 goals.

**E. Repowering Existing Facilities is Only a Feasible Option if Generators are Compensated the Same as Other Similarly-Situated Generation Resources**

In a purported effort to incentivize existing renewable generators to continue operating rather than abandoning their facilities at the expiration of their NYSERDA contracts, the recommendations in the Staff Tier 2 Report suggest that existing renewable generators be permitted to seek “maintenance support under Tier 2 for the existing baseline output of the facility, including the cost of the required capital project as an acceptable to-go-cost, assuming the facility could meet the required financial needs test when including the costs of the needed capital project to remain operational.”<sup>44</sup> Staff specifically declined to recommend that all of a facility's output be eligible for Tier 1 once repowered, meaning existing renewable generators would only be able to bid incremental output that is the direct result of the capital project into Tier 1 of the RES.<sup>45</sup> Such a proposal, however, provides generators no real incentive at all as

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<sup>42</sup> See Case 03-E-0188: *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (Issued Sept. 24, 2004) at 5-6, 12, 26-27.

<sup>43</sup> CES Order at 92.

<sup>44</sup> Tier 2 Report at 22-23.

<sup>45</sup> *Id.* at 23.

repowering only makes economic sense if the facility is compensated for all of its Non-emitting Power Attributes the same as other generators.

## V. CONCLUSION

Noble is grateful for the opportunity to submit comments on the Tier 2 Report and for consideration of the points raised above. While Noble acknowledges Staff's decision to expand eligibility under Tier 2 of the CES, the current construct for valuation of existing resources' Non-emitting Power Attributes falls far short of encouraging those facilities to continue providing their renewable attributes to New York. For all of the foregoing reasons, Noble therefore respectfully requests that the Commission not adopt Staff's recommendations in the Tier 2 Report and, instead, value existing resources' Non-emitting Power Attributes on par with other renewable resources in the RES.

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