

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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CASE 15-E-0302 - In the Matter of the Implementation of a Large-Scale Renewable Program and a Clean Energy Standard.

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.

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**Petition for Rehearing of RENEW Northeast, Inc.**

Pursuant to Public Service Law Section 22 and Section 3.7 of the New York State Public Service Commission's ("Commission's") regulations, RENEW Northeast ("RENEW"), a non-profit association of the renewable energy industry and environmental advocates, respectfully requests reconsideration of the Commission's August 1, 2016, *Order Adopting a Clean Energy Standard* ("CES Order").<sup>1</sup> RENEW strongly supports Governor Cuomo's initiative to provide 50 percent of New York's power generation from renewable energy by 2030 (the "50 by 30 goal") and the adoption of a Clean Energy Standard ("CES") to meet that goal. RENEW finds the Commission, as explained herein, committed a substantial error by limiting the eligibility for maintenance contracts to run-of-river hydroelectric facilities of 5 MW or less in size, and that those hydroelectric facilities and wind facilities have a commercial operation date prior to January 1, 2003, and comprise the baseline of renewable resources for the Renewable Portfolio Standard ("RPS") program when it was adopted. RENEW respectfully requests the Commission reconsider portions of its Order that implement the maintenance tier by allowing all renewable

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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*, Order Adopting a Clean Energy Standard (Issued Aug. 1, 2016) ("LSR Order"). The comments expressed herein represent the views of RENEW and not necessarily those of any particular member of RENEW.

resources having a commercial operation date before January 1, 2015, (“Existing Resources”) to be eligible for maintenance contracts or, in the alternative, to revise the Order to create an LSE obligation to procure Tier 2 RECs from all Existing Resources.

## **I. Arguments**

Under the Commission’s regulations, grounds for rehearing include (i) if the Commission committed an error of law or fact; or (ii) if new circumstances warrant a different determination. Here, both errors of fact and law materially affected certain provisions of the Commission’s CES Order such that reconsideration or limited rehearing on those points should be granted. Moreover, new circumstances and information regarding opportunities for exports of Existing Resources warrant reconsideration or limited rehearing to evaluate fully the immediate threat that exists for the export of renewable resources outside of New York, thus endangering the likelihood of success of the Governor’s renewable goals.

The Department of Public Service Staff’s (“Staff”) CES White Paper recommended two sub-tiers under Tier 2 to support the continued contribution of the existing renewable energy fleet in fulfilling the 50 by 30 goal. Under a Tier 2, all LSEs would have an obligation to procure RECs. Tier 2a would provide sufficient revenues to attract renewable resources for which New York must compete with other states while Tier 2b would provide sufficient revenue to maintain existing renewables ineligible to sell RECs to other states. In its August Order, the Commission rejected Staff’s proposed Tier 2a based on its determination that Existing Resources have likely recovered most of their initial capital costs and they would not likely sell their attributes to other states. Despite the record to the contrary, the Commission concluded “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.”<sup>2</sup>

The Commission’s decision limiting the types of Existing Resources eligible for the maintenance contracts is arbitrary and capricious and is not supported by substantial evidence.

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<sup>2</sup> CES Order, at 116.

There is no evidence in the record to support the Commission’s rationale “that there is no imminent risk” that Existing Resources will sell their clean energy attributes into other states. Brookfield Renewable Energy Group (“Brookfield”) demonstrated in its comments that ample demand exists for existing resources in surrounding markets. 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.<sup>3</sup>

RENEW respectfully requests the Commission reverse its decision by either allowing all Existing Resources to be eligible for maintenance contracts and provided with a minimum compensation floor for non-emitting attributes that is established in the same way as Zero-Emission Credits, or to require LSEs to procure Tier 2 RECs from Existing Resources. Providing incentives for Existing Resources to continue to supply New York will avoid the possible loss of these in-state resources as other states’ renewable programs compete for them. While the above does not fully address the out-of-state market opportunities for Existing Resources and their potential for export, it is significant step toward a degree of compensation that is better aligned with the record and a recognition of the need to adequately compensate for non-emitting attributes in order for the State to claim them as part of their baseline. Modifying the Order as described above will ensure equity among Existing Resources with each providing the same value of energy free of greenhouse gases. The Commission’s Order clearly treats a class of non-nuclear, non-emitting resources in a discriminatory manner in. Nothing in the record as it currently stands supports outright exclusion of a class of Existing Resources from the CES.

Supporting all Existing Resources in the CES will ensure the state will meet its 50 by 30 goal which is the primary purpose of the CES. While Existing Resources have likely recovered their capital costs, that means that the cost to retain the attributes from Existing Resources will likely have a lower cost than securing new renewable resources under Tier 1 to meet the needs created by the renewable energy attributes lost to adjacent regions. Compensation for existing

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<sup>3</sup> The pending New England Clean Energy RFP included eligibility for long-term contracting for firming hydro products that are classified by the White Paper as non-competitive. Days after the Commission issued its CES Order, Massachusetts’ governor signed into law an act for the contracting of up to 9.45 TWhs of Class I renewables and/or hydroelectricity.

renewable resources should be based on the benefits provided (the social cost of carbon adopted by the PSC).

While the need to provide incentives for new renewable resources is well understood, the record leading to the CES Order never evaluated the possibility that a REC market would exist for only new renewable resources. The social cost of carbon was evaluated in respect of other resources in the CES program but it was never evaluated with respect to a significant subset of existing privately-owned renewable resources. Therefore, RENEW submits the costs and benefits of the entire CES program requires reevaluation under the CES order's decision to proceed with a limited maintenance-only program.

## II. CONCLUSION

For the reasons discussed above, the Commission should grant RENEW's Petition for Rehearing of the August Order and grant the relief requested.

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Respectfully submitted,



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