



Institute for
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

January 8, 2018

Hon. Kathleen H. Burgess, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

VIA ELECTRONIC SUBMISSION

Attn.: Case 15-E-0302, Proceeding on Motion of the Commission to Implement
a Large-Scale Renewable Program and a Clean Energy Standard

**Subject: Comments on Staff Report Regarding Retention of Existing Baseline
Resources under Tier 2 of the Renewable Energy Standard Program**

Dear Secretary Burgess:

The Institute for Policy Integrity at New York University School of Law¹ (“Policy Integrity”) respectfully submits the following comments to the State of New York Public Service Commission (“Commission”) on a Department of Public Service Staff Report Regarding Retention of Existing Baseline Resources under Tier 2 of the Renewable Energy Standard Program. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity has extensive experience advising stakeholders and government decisionmakers on the rational, balanced use of economic analysis, both in federal practice and at the state level.

We are grateful for the Commission’s consideration of these comments.

Sincerely,

Sylwia Białek, Ph.D.
Economic Fellow
Institute for Policy Integrity
sylwia.bialek@nyu.edu

Burcin Unel, Ph.D.
Energy Policy Director
Institute for Policy Integrity
burcin.unel@nyu.edu

¹ This document does not purport to present New York University School of Law’s views, if any.

Introduction

The 2015 New York State Energy Plan set one of the most ambitious clean energy targets in the nation: by 2030 fifty percent of all electricity used in the State should be generated by renewable energy sources.² As a part of the effort to reach that target, the Commission issued an Order Adopting a Clean Energy Standard (“CES”), which established, among others, the Tier 2 maintenance program.³ The program supports the maintenance of certain at-risk baseline resource attributes from small hydro, wind, and biomass generation facilities, when they demonstrate a financial need and would cease operation without such support.

At the Commission’s request expressed in Order on Petitions for Rehearing from December 15, 2016, the Department of Public Service Staff (“Staff”) compiled the Report Regarding Retention of Existing Baseline Resources under Tier 2 of the Renewable Energy Standard Program (“Report”), discussing changes to the design of Tier 2 program.⁴

The Report provides several good recommendations. Staff and the Commission can further enhance economic efficiency in the program by:

- Harmonizing the Tier 2 payments across the proposed review processes; and,
- Addressing the links between the CES Tier 2 changes and relevant possible future policies pursued in New York, in particular a carbon charge implemented through NYISO and the value of distributed resources.

I. The value of maximum payments should not depend on the chosen form of review process

Staff recommends that renewable generators with socially desirable attributes that are at-risk would be eligible to receive a maintenance payment after going through either a quick “streamlined review,” or a more detailed “case-by-case review.”⁵ These maintenance payments would help cover the projected shortfall between total forecasted revenues and total forecasted operating costs so that these facilities can stay in the market.⁶ Staff also recommends capping the maximum payments that the generators can receive.

A properly set cap could ensure that Tier 2 payments do not exceed the value that the renewable resources provide and could minimize the cost to ratepayers. As Staff already correctly recognizes, the cap should correspond to the value of uninternalized damages

² NEW YORK STATE ENERGY PLANNING BOARD, 1 NEW YORK STATE ENERGY PLAN STATE ENERGY PLAN 112 (2015).

³ Order Adopting a Clean Energy Standard, Case 15-E-0302, State of New York Public Service Commission (August 01, 2016) at 17-18.

⁴ Staff Report Regarding Retention of Existing Baseline Resources under Tier 2 of the Renewable Energy Standard Program, Case 15-E-0302, State of New York Public Service Commission, (October 19, 2017) [hereinafter Report].

⁵ *Id.* at 19-20.

⁶ *Id.* at 13.

that the Tier 2 resources avoid.⁷ In other words, the cap should correspond to the monetary value of the avoided external damages that would otherwise be caused by greenhouse gas emissions from another generator, should the Tier 2 resource stop generating. Therefore, there is no clear reason why the caps should differ between the review processes: the value that renewable resources represent for the society is independent from the type of the review process.

Nonetheless the Report recommends providing payments based on two different formulas, depending on the type of the review process a generator undergoes when applying for the payments. First, under the “case-by-case review,” payments would be based on the Tier 1 Renewable Energy Credit (“REC”) price current at the time.⁸ Second, under “streamlined review,” payments would be based on the Social Cost of Carbon (“SCC”) price minus the Regional Greenhouse Gas Initiative (“RGGI”) allowance price.⁹

But those two formulas have the potential to yield very different payments. REC prices can go up and down significantly based on market dynamics, and a REC-based cap would have an inherent uncertainty. In contrast, the SCC increases are set¹⁰ and therefore an SCC-based cap would lack such uncertainty. In addition, it is realistic to assume that a REC-based cap would be higher than an SCC-based cap given the state’s ambitious clean energy goals. While having a cap that is more certain for quick reviews would reduce the risk of ratepayers, having such different caps could indeed hurt economic efficiency if the REC-based cap and the SCC-based cap differs substantially.

For example, the difference in caps could have a substantial impact on generators that have revenue shortfalls between the two cap values.¹¹ Generators with shortfalls that are higher than the SCC-based cap but lower than the REC-based cap will have no choice but to apply through the case-by-case review if they want to stay in the market. But while streamlined application is, by design, relatively easy to perform, the costs of submitting the application for the case-by-case review can be substantial. As the Report acknowledges, a case-by-case

⁷ *Id.* at 19, fn 26.

⁸ *Id.* at 20.

⁹ *Id.* at 19.

¹⁰ The Interagency Working Group first developed the SCC estimate in 2010 and updated the estimate in 2013, 2015, and 2016. The National Academies of Sciences, Engineering, and Medicine has issued two reports that recommended future improvements to the methodology. And in response to those reports, Resources for the Future and the Climate Impact Lab are currently working on the next update. RFF’s Social Cost of Carbon Initiative, Resources for the Future, <http://www.rff.org/research/collection/rffs-social-cost-carbon-initiative>; Social Cost of Carbon, Climate Impact Lab, <http://www.climateprospectus.org/research-area/social-cost/>.

¹¹ For generators that have revenue shortfalls lower than the SCC-based cap, the cap differential between the two processes is irrelevant. Those generators will apply using the streamlined application, given the lower transactional costs. Generators that have a shortfall that is higher than the REC-based cap will leave the market regardless of the difference in the two caps.

review can be especially burdensome for small units.¹² Small units may lack the staff or information necessary to go through the process.

Consequently, a small generator that faces a revenue shortfall higher than the SCC-based cap might be forced out of the market, while a similar but larger generator with the resources to go through the case-by-case review would stay in the market. If such a small generator had a lower per-MWh loss compared to the larger generator, this type of cap design would lead to the exit of the more efficient generator, while keeping the less efficient generator in the market, hurting economic efficiency.

Therefore, the Commission should clearly identify and discuss the attributes of the renewable resources that are undervalued by the markets, and pick a uniform cap based on the value of these attributes. If the Commission believes it is necessary to provide a different payment depending on the review process, the Commission should clearly explain how that different payment is related to the level of review.

II. The Report should consider parallel initiatives in New York that seek to internalize the generation externalities

The Report discusses these caps in a vacuum, without analyzing any potential interactions with the other policy initiatives going on in the State. However, there are other policy initiatives that might have a significant impact on how the payments should be designed.

For example, implementation of carbon pricing in wholesale markets¹³ would affect the optimal amount of Tier 2 payments. If a carbon price is implemented in wholesale markets, the amount of the SCC-based cap would have to be adjusted to ensure that it can still reflect the uninternalized damages from carbon emissions. Consequently, if NYISO implements a carbon charge based on the SCC similar to what is suggested in the Report, no additional support payments related to carbon emissions could be provided under the streamlined review process, while the REC-based cap could still have a positive value. In addition, in that case, to receive payments, all generators would have to go through the case-by-case review, eliminating the potential gains from a simplified and streamlined procedure.

Similarly, Tier 2 payments are interwoven with the value stack design of distributed energy payments. Tier 2 payments provide maintenance payments to eligible resources in order to compensate those resources for the value of avoided emissions they provide while the value stack design in the Value of Distributed Energy Resources (“VDER”) proceeding intends to compensate generators for several different attributes, including avoided carbon emissions.¹⁴ The two programs cannot be considered separately. If the VDER proceeding

¹² See Report, *supra* note 4 at 15-16. (“(s)ome parties have described the application process as administratively cumbersome and have noted that small facility owners do not maintain staff to devote to regulatory processes or time to prepare and process an application. Others describe the review process as an unworkable construct”).

¹³ See New York State Department of Public Service Docket for Matter 17-01821.

¹⁴ See New York State Department of Public Service Docket for Case 15-E-075.

leads to a tariff that explicitly values avoided carbon emissions based on the SCC, a Tier 2 cap based on the SCC must be adjusted accordingly.

Conclusion

New York continues to be a leader in ensuring that generators are provided with the true value of avoided emissions. The adjustments to the Tier 2 program have the potential to move New York closer to achieving the goals specified in 2015 New York State Energy Plan. To assure that the reforms do not create inefficiencies, the Commission should harmonize the payments across the review processes. Additionally, it ought to address how the Tier 2 program could interact with other potential regulatory initiatives in New York's energy markets.