



January 8, 2018

Via Electronic Filing

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

Re: In the Matter of the Implementation of a Large Scale Renewable Program (15-E-0302)

Dear Secretary Burgess:

Attached are the comments of Environmental Advocates of New York, Natural Resources Defense Council, Pace Energy & Climate Center, and Sierra Club (the Clean Energy Advocates) on the Department of Public Service Staff Report Regarding Retention of Existing Baseline Resources under Tier 2 of the Renewable Energy Standard Program.

Respectfully submitted,

Miles Farmer  
Clean Energy Attorney  
Natural Resources Defense Council

**STATE OF NEW YORK**  
**PUBLIC SERVICE COMMISSION**

---

CASE 15-E-0302 – In the Matter of the Implementation of a Large-Scale Renewable Program

---

**COMMENTS OF ENVIRONMENTAL ADVOCATES OF NEW YORK, NATURAL  
RESOURCES DEFENSE COUNCIL, PACE ENERGY & CLIMATE CENTER, AND  
SIERRA CLUB ON THE DEPARTMENT OF PUBLIC SERVICE STAFF REPORT  
REGARDING RETENTION OF EXISTING BASELINE RESOURCES UNDER TIER 2  
OF THE RENEWABLE ENERGY STANDARD PROGRAM**

**Dated: January 8, 2018**

## **I. Introduction**

The Clean Energy Standard (CES) commits the state to achieve 50 percent renewable energy generation by 2030, providing a cleaner and more prosperous future for New Yorkers. Delivering on that commitment will require not only the construction of new renewable resources, but also retaining the valuable contributions of New York’s existing renewable generators. Environmental Advocates of New York, Natural Resources Defense Council, Pace Energy & Climate Center, and Sierra Club (the “Clean Energy Advocates”) appreciate Department of Public Service staff’s efforts to investigate this critical issue in the Staff Report Regarding Retention of Existing Baseline Resources Under Tier 2 of the Renewable Energy Standard Program (hereinafter “Staff Tier 2 Report”). Here, we provide feedback to the Public Service Commission (PSC or the “Commission”) as it considers the Staff Tier 2 Report, so as to ensure the successful and cost-effective administration of the CES program.

## **II. The Commission should conduct an accounting of current and potential REC exports, so as to ensure it either retains those resources or adjusts Tier 1 targets accordingly to prevent backsliding from the 50 percent by 2030 renewables goal**

Existing renewables are critical to achieving 50 percent renewables supply by 2030. Synapse Energy Economics’ report, *Policies to Cost-Effectively Retain Existing Renewables in New York*,<sup>1</sup> details the contributions of existing ‘baseline’ resources to New York’s renewable energy vision. The PSC anticipates that these resources will supply 29 percent of projected load in 2030.<sup>2</sup> But as Synapse explains, unless further policies are put in place, a significant portion of

---

<sup>1</sup> Synapse, *Policies to Cost-Effectively Retain Existing Renewables in New York*, (Dec. 22, 2017).

<sup>2</sup> Synapse Report at 1 (calculations based on Clean Energy Standard order).

these resources could potentially cease to deliver their clean energy benefits to New York.<sup>3</sup> Any export of these resources would make achievement of the 50 percent goal more expensive, as Synapse found that retaining existing resources could save New York customers between \$135 million and \$377 million from 2019-2023.<sup>4</sup>

Given this possibility, it is essential that the PSC and New York Energy Research & Development Authority (NYSERDA) implement an accounting system that ensures the total of existing and new resources adds up to 50 percent of supply by 2030. Any dip in existing renewables must be met with an increase in new renewable resources, and the Commission and NYSEDA's policy platform should seek to cost effectively provide the best combination of the two.

As set forth in our prior comments in this docket, the first step to achieving this integrated solution is an accurate accounting system.<sup>5</sup> We renew our request for an accounting of: (1) the total megawatt-hours (MWhs) and contract end date of New York renewable generation procured through New York's previous RPS programs that is eligible for selling Renewable Energy Credits (RECs) to a neighboring state; (2) the total MWhs, percentage of the 50 x 30 renewables goal, and percentage of current electricity demand represented by projects that previously participated in a New York RPS program but are currently exporting RECs and no longer contributing to the 50 x 30 goal; and (3) the total MWh of electricity generation from CES-eligible renewable generation technologies that are currently exporting energy and/or RECs to other states but that came online prior to 2003. This third category is renewable generation

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See letter from Alliance for Clean Energy New York, Natural Resources Defense Council, Sierra Club, environmental Advocates of New York, and Pace Energy & Climate Center, Case 15-E-0302 (Dec. 12, 2017).

that would otherwise count towards New York's 50 x 30 goal in the baseline, if it was not already being exported.

As the Alliance for Clean Energy New York observed in its Petition for Rehearing or Clarification of the Clean Energy Standard Order, without tracking mechanisms for existing renewables and clear direction that existing resources delivering into other regions *will not be counted*, the Commission risks falling short of the CES's goals.<sup>6</sup> Double counting of existing resources is not acceptable. Accordingly, *at minimum*, the tracking and compliance mechanisms to be developed must:

- Set annual *total* renewables goals that include anticipated contributions from both existing and new resources.
- Clarify that resources will not be counted toward achievement of these annual goals if they export their environmental attributes.
- Clarify that in-state resources, imports *and exports* of RECs will be tracked in NYGATS, and that exports will be tracked not only for Tier 1 resources but also for existing resources that do not generate Tier 1 RECs.
- Require the development of a mechanism that ensures that when any loss of existing renewables is anticipated, either (i) compensation for that existing clean attribute is increased so as to allow for retention of that resource; or (ii) the Tier 1 requirement is increased so as to account for the loss of the existing resource.

This tracking and compliance mechanism will inform the State's policy choices with regard to existing resources, so as to further the cost-effective achievement of the CES's 50 x 30 goal, *along with annual goals* that set the state on a trajectory to 50 x 30.

---

<sup>6</sup> Alliance for Clean Energy New York, *Petition for Rehearing or Clarification of the Order of August 1, 2016 Adopting a Clean Energy Standard*, Case 15-E-0302, at 7 (Aug. 31, 2016).

### **III. Tier 2 contract design**

#### **A. The Staff Report suggests a number of helpful revisions to Tier 2 of the Clean Energy Standard that should be adopted**

**3.1.2 – Vintage:** The Staff Report recommends revising the vintage date for Tier 2 to include facilities in operation prior to January 1, 2015.<sup>7</sup> The Commission should adopt this recommendation, as it corrects a mismatch between the current Tier 2 eligibility requirements (that a facility be in operation prior to January 1, 2003) and the date for which the baseline was calculated (facilities in operation as of 2014).

**3.1.4 – To-go Costs:** The Staff Report also recommends that “to-go” costs used for calculating Tier 2 contract awards be modified to include a risk contingency equal to 5 percent of forecasted Operation and Maintenance costs, and to include a return on capital for new capital expenditures necessary to maintain safe and efficient operations.<sup>8</sup> These two changes will allow the contracts to better reflect the costs and risks that facility owners face, and will help to ensure against the loss of production from existing facilities. They should be adopted.

#### **B. All Tier 2 contracts should be capped at the Tier 1 REC price**

The Staff Report helpfully recommends an option to streamline the process to determine whether a facility requires a Tier 2 contract in order to continue to deliver its clean energy attributes to New York. Such a process should be adopted, and will ease the administrative burden currently faced by owners of existing facilities. However, the Staff Report curiously suggests that the contract price for facility owners who opt for this streamlined process should be

---

<sup>7</sup> Staff Report at 10.

<sup>8</sup> Staff Report at 12-15.

capped at the Social Cost of Carbon minus Regional Greenhouse Gas Initiative allowance prices, as opposed to a cap at Tier 1 REC prices for facilities that undergo a case-by-case review.<sup>9</sup> The Commission should adopt the streamlined review process, but it should cap contracts awarded through that process at the Tier 1 REC price. The Synapse report suggests that the difference between a Tier 1 cap and a cap at the Social Cost of Carbon (SCC) minus RGGI could be meaningful, because it projects New England Class 1 REC prices to be higher than the SCC minus RGGI in 2019 and 2020, meaning that SCC minus RGGI may not provide an adequate incentive for existing renewable generators to remain in New York.<sup>10</sup>

Whether supported through the streamlined process or through a case-by-case review, the continued operation of existing facilities will avert the need for additional Tier 1 RECs. Accordingly, capping contract awards at that price will facilitate the most cost-effective achievement of the CES's 50 percent by 2030 target. The Staff Report does not explain why a project with a streamlined review process should not be awarded a contract at less than Tier 1 price should the Tier 1 price be higher than SCC minus RGGI. Because a contract in this case would still facilitate a more cost-effective strategy to ensuring 50 percent renewables supply by 2030, Tier 2 should still support entry into such a contract and therefore the cap should also be at Tier 1 prices for these contracts.

#### **IV. Repowering**

The Clean Energy Advocates support the Phase 1 Implementation Plan's inclusion of repowered facilities as Tier 1-eligible, subject to certain requirements.<sup>11</sup> Despite acknowledging

---

<sup>9</sup> Staff Report at 19-20.

<sup>10</sup> *Id.* at 20-21.

<sup>11</sup> (1) the Prime Mover had operated for the length of its useful life; (2) the Prime Mover had been completely replaced with a new one which was installed after January 1, 2015; (3) the

that “repowering of existing facilities share the underlying intention of preserving the generation of existing renewable resources if doing so costs less than replacing them with new resources,”<sup>12</sup> the Staff Report limited Tier 1 eligibility to only the increase in capacity from the repowering, rather than the entire output of the facility. The Staff Report’s rationale for this was that “allowing an existing facility to be compensated for the entire output of a repowered facility, including generation included in the baseline, as part of a Tier 1 bid, could circumvent the financial needs test that the Commission requires for maintenance support under Tier 2.”<sup>13</sup> However, the Phase 1 Implementation Plan’s criteria for Tier 1 repowering eligibility effectively eliminate the Staff Report’s concern about Tier 2 financial need, as they require a complete replacement of the facility and significant capital investment after January 1, 2015. Given these requirements, it would seem highly improbable that a facility would choose to expend significant investment in repowering and seek Tier 1 support simply to avoid the Tier 2 financial needs test. And the administrative complexity of having to file for a maintenance tier contract in addition to powering and receiving tier 1 credits only on the excess could dissuade many owners from repowering. Making the entire output of a repowered facility eligible for Tier 1 will encourage generators to invest in updating their existing facilities at lower cost than adding new generation. Consequently, the Commission should reject the Staff Proposal’s repowering approach and endorse the original approach outlined in the Phase 1 Implementation Plan.

## **V. Conclusion**

---

replacement of the Prime Mover had resulted in a material increase of 15 percent or more in efficiency of production of the generation unit; and (4) 80 percent of the tax basis from the completed repowered facility is derived from capital expenditures made after January 1, 2015.

<sup>12</sup> Staff Report at 21.

<sup>13</sup> Id. at 22.



We agree with Staff that changes are needed to Tier 2 of the Clean Energy Standard. As set forth above, we recommend that the Commission accept some of Staff's recommended changes, while reaching separate conclusions on other areas. Adopting the changes suggested herein will facilitate a cost-effective combination of existing and new resources to achieve New York's 50 percent renewables target by 2030.

Sincerely,

**Environmental Advocates of New York**

***Conor Bambrick***

Air and Energy Director

(518) 462-5526

[cbambrick@eany.org](mailto:cbambrick@eany.org)

**Natural Resources Defense Council**

***Miles Farmer***

Clean Energy Attorney

(212) 727-4634

[mfarmer@nrdc.org](mailto:mfarmer@nrdc.org)

**Pace Energy and Climate Center**

***Karl R. Rábago***

Executive Director

(512) 968-7543

[krabago@law.pace.edu](mailto:krabago@law.pace.edu)

**Sierra Club**

***Lisa Dix***

Senior New York Campaign Representative

(631) 235-4988

[Lisa.Dix@sierraclub.org](mailto:Lisa.Dix@sierraclub.org)