

**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

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**COMMENTS OF**  
**PACE ENERGY AND CLIMATE CENTER**

**Dated: November 14, 2016**

# **Pace Energy and Climate Center**

## **Comments on Petitions for Rehearing**

**Case 15-E-0302**

**November 14, 2016**

In response to the petitions from numerous parties<sup>1</sup> requesting rehearing on the New York Public Service Commission's Clean Energy Standard Order,<sup>2</sup> the Pace Energy and Climate Center welcomes this opportunity to comment on the treatment of existing renewables in the Clean Energy Standard (CES).<sup>3</sup> Pace supports the requests for rehearing of numerous parties that are concerned with the treatment of existing renewables under the CES, particularly as the Order compares to the proposals that guided public comment and discussion of the features of a CES portfolio in Staff's CES White Paper<sup>4</sup> and Cost Study.<sup>5</sup> The state has a compelling interest in retaining the renewable attribute credits from existing renewable resources, both for the purposes of preserving its legitimate claim on these renewable attributes for CES compliance, and for maintaining necessary financial support for projects' continued operation. We believe that the legal standard for the Commission's reconsideration of this question has been met, and look forward to revisiting these issues with the Commission to develop a proper record that reflects the need for continued support of existing renewable resources from the Renewable Portfolio Standard (RPS) Main Tier.

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<sup>1</sup> Case 15-E-0302, Petition of NYSERDA Pursuant to August 1, 2016 Order, NYSERDA (Aug. 25, 2016).

<sup>2</sup> Case 15-E-0302, Order Adopting a Clean Energy Standard, NYS PSC (Aug. 1, 2016) (hereinafter "CES Order").

<sup>3</sup> Pace does not take a position on many of the petitions for rehearing submitted for this proceeding, including those addressing Tier 3, and including the Council on Intelligent Energy and Conservation Policy *et al*, the Alliance for Green Energy, Castleton Commodities, the Public Utility Law Project, the New York Association of Public Power, Taylor Biomass, and Ampersand Hydro.

<sup>4</sup> Case 15-E-0302, Staff White Paper on Clean Energy Standard (Jan. 25, 2016)

<sup>5</sup> Case 15-E-0302, Clean Energy Standard Cost Study (June 6, 2016).

**I. The legal standard for the Commission’s rehearing of this issue has been met.**

The legal standard for a rehearing petition requires that petitioners identify an error of law or fact in the Commission’s Order, or new circumstances that merit a different determination.<sup>6</sup> We believe both standards are satisfied here by the arguments in several of the petitions discussed below.

**a. An error of fact is established by the lack of risk assessment that existing renewables might sell their renewable attributes into other states, and the lack of justification for the assertion that RPS renewables no longer require financial support.**

As has been noted by petitioners ACE NY, RENEW Northeast Inc., ReEnergy LLC, Brookfield Renewables, the Independent Power Producers of New York, and Energy Ottawa Inc., the CES Order does not offer facts supporting its conclusion that “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>7</sup> In fact, as petitioners point out, Maryland, Connecticut, Vermont, Maine, and Massachusetts all offer different opportunities for existing New York renewables to export RECs for compliance purposes under various tiers of their respective renewable portfolio standards already. In particular, 19% of the Massachusetts RPS obligation requirement is already met by New York wind and landfill gas projects, as per the 2014 compliance report of the MA RPS,<sup>8</sup> and more may be forthcoming. ACE NY notes that at least one large renewable project

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<sup>6</sup> 16 NYCRR §3.7(b).

<sup>7</sup> CES Order at 116.

<sup>8</sup> *Massachusetts RPA & APS Annual Compliance Report for 2014*, May 14, 2016, Massachusetts Department of Energy Resources, <http://www.mass.gov/eea/docs/doer/rps-aps/rps-aps-2014-annual-compliancereport.pdf>.

previously funded under the RPS Main Tier is already exporting its RECs out of state at the completion of its term. ReEnergy LLC cites specific biomass projects that are already exporting RECs out of New York at the conclusion of their RPS terms.<sup>9</sup> Some parties, including Brookfield Renewables, made note of these market opportunities in their comments throughout the CES proceeding,<sup>10</sup> and Staff's proposals reflected an understanding of this fact.

The potential for existing renewable resources to export their RECs into other states was explicitly contemplated throughout the proceeding, as the Large Scale Renewables (LSR) Options Paper noted that "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."<sup>11</sup> Consequently, many parties made comments throughout the proceeding based on the assumption that the structure for incentives in the final CES Order would roughly resemble recommendations made by Staff and its consultants in both the LSR Options Paper and the CES White Paper.<sup>12</sup> The potential that no Tier 2A would be established was never flagged for parties to comment on, and had it been, many of these issues may have been explored more thoroughly. Without a supportive record established throughout the proceeding or any factual support offered by the Commission itself for its conclusion, the Order's determination that there is no risk of flight for existing renewables constitutes an error of fact. We support the petitions, referenced above, that request rehearing on this issue.

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<sup>9</sup> Petition of ReEnergy LLC at 6-7.

<sup>10</sup> Case 15-E-0302, Comments of Brookfield Renewable Energy Group, at 15 and Appendix A (Apr. 22, 2016); Brookfield Renewable Comments on the CES Cost Study, at 9-10 and Appendix A (Jun. 6, 2016).

<sup>11</sup> New York State Research and Development Authority, Large-Scale Renewable Energy Development in New York: Options and Assessment ("LSR Options Paper") (June 1, 2015), at 115.

<sup>12</sup> Case 15-E-0302, Staff White Paper on Clean Energy Standard (January 25, 2016).

The Commission also does not offer factual support in the Order for the conclusion that RPS vintage existing renewables “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.”<sup>13</sup> This position is not supported in the CES Order, and again, it is expressly contradicted by the CES White Paper. This assumption is particularly counter to the facts, as noted by ReEnergy LLC in its petition, in the case of biomass, which has high going-forward and operation costs.<sup>14</sup> Parties to the proceeding participated on the anticipation that the models and assumptions that informed the LSR Options Paper and CES White Paper on this matter would bear reasonable relation to the program ultimately approved by the Commission. The question of whether RPS renewables required further support under the CES was assumed affirmatively at the outset, or otherwise a more substantial record may have been developed on this question. For lack of any factual support in the Order, this assumption also qualifies as an error of fact sufficient to justify rehearing on this question.

**b. A new circumstance warranting reconsideration is demonstrated by the passage of the Massachusetts’ *Act Relative to Energy Diversity*.**

Pace agrees with petitioners ACE NY, Brookfield Renewables, and the Independent Power Producers of New York that the passage of Massachusetts’ *Act Relative to Energy Diversity* represents a new circumstance that satisfies the legal requirements for rehearing. This new circumstance also represents an independent grounds sufficient to merit rehearing on the issue of the eligibility of RPS renewables for Tier 2.

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<sup>13</sup> CES Order at 116.

<sup>14</sup> ReEnergy LLC petition at 4.

On August 8, 2016, Massachusetts passed an *Act Relative to Energy Diversity*, which will allow for the contracting of up to 9.45 terawatt-hours of hydropower, Class I renewables, and hydropower balancing Class I renewables. Existing hydropower resources are eligible to participate in procurements arising from this legislation, including hydropower resources located in New York State. This new legislation not only lends credence to the immediacy of the threat of export of existing renewables and/or hydropower, but provides a basis for rehearing under the Commission's standard as a new fact or circumstance. The Massachusetts legislation may provide precisely the sort of enticements to leave the in-state market that Staff warned of in the CES White Paper and LSR Options Paper. As this legislation was not available for the Commission to consider at the time the CES Order was issued, it provides a new circumstance warranting the reconsideration of the exclusion of RPS Main Tier renewables from the CES Tier 2.

**II. Any CES compliance regime that assumes the renewable attributes of generation without actually tracking or acquiring and retiring the RECs produced by that generation will create confusion around the ownership of renewable attributes and the potential for double-counting.**

Having satisfied the standard for rehearing the Clean Energy Standard Order on the above grounds, the Commission should consider more broadly the role that existing and baseline renewables play in the state's overall CES compliance. A number of parties, including Hydro Quebec and ACE NY, call into question the validity of assuming the baseline of existing renewables towards compliance with the 50% CES target without the state or any LSE possessing the renewable attributes of that power. The CES Order does not specify how it will account for the RECs of projects that are incorporated into the baseline renewable generation

fleet. The renewable attribute created by existing generation will naturally vest with the owner of the generation unless or until it is sold to the state, a load-serving entity, or other third party within or outside New York State. To be counted towards CES compliance, and to assure against double-counting, RECs from existing renewable generation must be appropriately tracked or acquired and retired towards the CES obligation.

The state cannot assume or mandate the retirement of these RECs without fairly compensating the owners of the generation. The fact that these projects have received some historic compensation for a past stream of REC production does not have any bearing on the free disposition of their future RECs. Even if these RECs were not sold outside of New York, the state's presumption to count their renewable attributes towards a statewide goal, a reflection of the attributes of system mix power across the jurisdictional load serving entities, might cast uncertainty over the value of the REC itself. If, *e.g.*, existing renewable generators assumed as part of the state's renewable baseline were to sell RECs into the voluntary, in-state market, allowing a purchaser to make green claims above and beyond the claim that all New York ratepayers might enjoy by taking service from CES-compliant LSEs, the integrity of that renewable claim would be compromised for either the state, the private purchaser, or both. In other words, the physical proximity of any renewable generator in New York cannot be interpreted to invest the renewable attributes created by the generator in the state itself. Like any Tier 1 renewable generator, to validly claim that the renewable attributes of existing generation contribute to the state's CES target, the state or jurisdictional LSEs must track or acquire and retire the RECs in question.

**III. The 5 MW cap on Maintenance Tier eligible run-of-river hydroelectric is not supported in the CES Order.**

Parties including Brookfield Renewables and Renew Northeast note that the Commission's 5 MW cap on Maintenance Tier eligible hydroelectric power is not supported within the Order. We agree and request the Commission revisit this aspect of the Order or provide appropriate analysis justifying the restriction. Petitioners note that this 5 MW cap was not proposed, nor was comment solicited on a similar restriction throughout the proceeding. The policy basis for this clause should be explored further, and petitioners allowed to review and respond to the relevant analysis underlying the Commission's decision.

**IV. Reconsideration and expansion of Tier 1 procurement strategies to include Power Purchase Agreements will be timely even before first triennial review.**

As we have throughout the CES proceeding, Pace maintains that a portfolio approach for Tier 1 renewables procurement, particularly enabling the use of long-term Power Purchase Agreements (PPAs), would have several benefits over continuing to procure renewables solely through REC contracts. Cost studies have emphasized the comparative value of PPAs to lower the financing cost of renewable projects as compared to a REC-only approach,<sup>15</sup> while party comments and supplemental reports have emphasized the residual value captured by utility-owned generation (UOG).<sup>16</sup> It is clear that between long-term PPAs and UOG, there are several options for the long-term procurement of LSR that expand on the REC-only procurement model used under the state's previous Renewable Portfolio Standard design. A diverse procurement strategy would also ensure the lowest CES program costs by fostering competition and providing sufficient flexibility in the future. We encourage the Commission to explore this possibility in advance of the first triennial review.

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<sup>15</sup> See NYSERDA, "Large Scale Renewables in NY: Options and Assessment," June 2015.

<sup>16</sup> See Case 15-E-0302, Climate Policy Initiative, "Additional LSR Financial Modeling Sensitivities," (May 4, 2016).

## V. Conclusion

For the reasons set out above, Pace endorses several of the above-referenced petitions for rehearing submitted in this case, particularly those which apply to RPS renewables ineligible for Tier 2, as well as Maintenance Tier hydroelectric power over 5 MW. We encourage the Commission to reconsider its Order consistent with a compliance mechanism that properly accounts for the renewable attributes generated by all generation sources in New York's portfolio, and commend the Commission to consider broader procurement strategies for the CES Tier 1 generally before first triennial review.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan Gerow". The signature is fluid and cursive, with the first name "Jordan" being more prominent than the last name "Gerow".

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