

September 30, 2016

VIA ELECTRONIC MAIL

Honorable Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223

Re: Case 15-E0302 – Proceeding on Motion to the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

Dear Secretary Burgess:

On behalf of the Coalition of On-Site Renewable Users (CORE) and Second Nature, attached please find CORE's and Second Nature's Response to the New York State Energy Research and Development Authority's (NYSERDA) August 25, 2016 Petition for Clarification filed in the above docket.

Respectfully submitted,



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**ATTORNEYS FOR THE COALITION OF ON-SITE RENEWABLE USERS (CORE)**

**ATTORNEYS FOR SECOND NATURE**

**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**

The Coalition of On-Site Renewable Users (“CORE”)<sup>1</sup> and Second Nature<sup>2</sup> hereby respectfully submits this response (“Response”) to the New York State Energy Research and Development Authority’s (“NYSERDA”) Petition for Clarification (“Request”) filed on August 25, 2016 and the Commission’s subsequent notice Seeking Comment on Clarification (“Notice”).

**INTRODUCTION**

NYSERDA asks the Commission to clarify its August 1, 2016 Order in this docket (“CES Order”) regarding: (1) whether, under the Commission’s mandate that each New York Load Serving Entity (“LSE”) procure new renewable resources beginning in 2017, it should count as part of the utility’s obligation, electrical load served by privately-owned behind-the-meter (“BTM”) renewable energy projects, and (2) how the environmental attributes of

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<sup>1</sup> CORE is an ad-hoc group of New York on-site renewable energy developers and users. Its members, who jointly and severally submit these comments (“Response”), include Bausch & Lomb, Cornell University, Distributed Sun, LLC, Dynamic Energy USA, EnterSolar, LLC, Gallagher Bus Service Corp. Hobart & William Smith Colleges and Rochester Institute of Technology (“RIT”).

<sup>2</sup> Second Nature works to proactively build a sustainable and positive global future through initiating bold commitments, scaling successful actions, and accelerating innovative solutions among leadership networks in higher education. The Climate Leadership Commitments are a signature program of Second Nature and the Climate Leadership Network comprises more than 600 colleges and universities in every state and the District of Columbia who have committed to take action on climate.

privately owned BTM renewable energy projects should be treated, in particular, NY-Sun and its predecessor Customer-Sited Tier (CST) projects. The Commission Staff has characterized this latter question as whether the environmental attributes of CST projects should be credited against the LSE's mandatory renewables obligation "without further action by the LSE's."<sup>3</sup> NYSERDA thus wishes to claim for the mandatory Renewable Energy Standard ("RES") program the environmental attributes associated with projects voluntarily undertaken, funded and built by private companies, particularly those that received any grant funding from NYSERDA.

CORE and Second Nature strongly oppose NYSERDA's request.<sup>4</sup> NYSERDA's proposal to transfer on-site Renewable Energy Certificates, or REC's, to LSE's will disqualify the environmental claims of hundreds of projects developed by New York corporations, universities, municipalities, counties and other citizens that, through 2015 alone, represent an approximately \$1 billion investment in New York.<sup>5</sup> A key legal requirement for these on-site generators to claim the "greenness" of electricity produced from their renewable resources is ownership of the REC's.

NYSERDA's proposal will clearly undermine future on-site investment in New York. It will deprive corporations, universities and municipalities of their claims to the

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<sup>3</sup> "Petition for Clarification," issued on August 10, 2016 ("Petition") Case 15-E-0302 - Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard. See Commission "Notice Soliciting Comments on Request for Clarification," issued September 12, 2016 ("Notice") Case 15-E-0302 - Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard.

<sup>4</sup> Second Nature does not participate in Section III of this Response that addresses individual contracts affected by NYSERDA's Petition.

<sup>5</sup> To be discussed, *infra*, the amount of grant funding to date for CST projects is relatively minor compared to Main Tier funding as well as a percentage of the total capital investment in on-site projects.

environmental attributes of their projects and foreclose their ability to achieve their sustainability, environmental, energy and climate goals and commitments. If the Petition is proposing to allocate to LSE's REC's from on-site renewable projects that have already entered into agreements with NYSERDA and are either in commercial operation or in construction, NYSERDA's request would amount to a violation of those agreements and an unconstitutional taking of private property. Awarding future environmental attributes from new third-party renewable energy projects to LSE's would conflict with existing State policies, halt the development of future voluntary on-site development and green trading markets, and impede the options available to the Commission in the Distributed Energy Resources ("DER") proceeding in determining a successor formula and framework for net energy metering.

NYSERDA's Petition highlights an ongoing underlying tension that the Commission has yet to squarely address between: (1) the goal of New York State for 50 percent of its electricity to come from renewable energy sources like wind and solar by 2030 ("50 x 30"), and (2) the equally laudable goals of the members of the private sector voluntarily to reduce their greenhouse gas ("GHG") emissions and carbon footprint by as much as 100 percent and use up to 100 percent renewable energy. Achieving either or both of these remarkable goals would be a stunning achievement that would cement the State's position as a global leader in combating climate change and reducing greenhouse gas emissions.

One would expect that these dual goals would be equally embraced by NYSERDA. NYSERDA instead, as reflected in its Petition, has approached these goals as an either-or proposition – as if the voluntary carbon reduction efforts of commercial and industrial users threaten the State's goals - as if private industry's investment in and development of

renewable energy projects in the State will not achieve the same reductions in fossil fuel consumption in New York, and have the same salubrious effect on the State’s health, environment, and energy security, as renewable energy projects procured by LSE’s.

The Commission in its Clean Energy Standard Order (“CES Order”) properly found that BTM generation should be excluded from NYSERDA’s load forecast, and that on-site projects owned by corporations, universities, municipalities, counties and other commercial, industrial and institutional users in New York have the right to make their own claims about the “greenness” of renewable energy produced at their sites and its impact on their carbon footprint. These claims are evidenced by their ownership of the REC’s associated with their project.

## **DISCUSSION**

### **I. NYSERDA’s Proposal Would Undermine the Key Driver of Voluntary Efforts toward Renewable Energy Development and Carbon Emission Reductions**

New York’s over one million commercial and industrial (“C&I”) energy users<sup>6</sup> make up the largest energy sector in the State.<sup>7</sup> The C&I sector includes prominent businesses and employers in the manufacturing, construction, transportation, higher education, hospitality, financial services, food processing, electronics and health care industries.<sup>8</sup> Through 2015, New York’s corporate citizens had invested approximately \$900 million in solar PV

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<sup>6</sup> 2014 Total Electric Industry- Customers, EIA, [https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table1.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table1.pdf), (last visited September 26, 2016).

<sup>7</sup> *Id.* See Electric Power Annual 2014, EIA, Table 2.1 (February 2016), available at <https://www.eia.gov/electricity/annual/pdf/epa.pdf> (last visited September 29, 2016).

<sup>8</sup> *Id.*

generation alone on their sites,<sup>9</sup> and custom-sited panels represents four-fifths of the State's solar generation<sup>10</sup>

Over 110 of New York's largest corporations, colleges, and financial institutions, plus municipalities, counties and others, have entered into contractual commitments or taken public pledges to voluntarily reduce their GHG emissions and increase their use of renewable energy.<sup>11</sup> From 2012 to 2016 there was a 40% increase in companies adopting sustainable business principles.<sup>12</sup> Many of New York's companies and private institutions are among the eighty-one companies that have committed to source *100 percent* of their electricity from renewable sources.<sup>13</sup> These private voluntary commitments have generated new jobs and other significant economic benefits for the State.<sup>14</sup>

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<sup>9</sup> See New York State Energy Research and Development Authority, New York State Renewable Portfolio Standard, Annual Performance Report Through December 2015, Final Report (March 2016), p. 16 (reporting approximately 85 MW on line and 192 MW under construction). We have conservatively estimated an average installed cost of \$3.20/watt.

<sup>10</sup> State Profile and Energy Estimates, EIA, <https://www.eia.gov/state/analysis.cfm?sid=NY> (Sept. 26, 2016). See U.S. Energy Information Administration, Electric Power Monthly (February 2016), Tables 1.3.B, 1.17.B.. See New York State Energy Research and Development Authority, New York State Renewable Portfolio Standard, Annual Performance Report Through December 2015, Final Report (March 2016), p. 11.

<sup>11</sup> See Attachment A for partial list of New York companies and organizations that have signed on to voluntary GHG reduction commitments. See also "Corporate Renewable Deals 2012 to 2016, Business Renewables Center. In 2015, US EPA's Green Power Partnership program had over 1300 partners collectively using 30 Gigawatthours of green power annually, <https://www.epa.gov/greenpower/green-powerpartnership-program-success-metrics>, and the amount of assets subject to fossil divestment rose from \$50 billion in 2014 to \$2.6 trillion in 2015. State of Green Business 2016, GreenBiz Group Inc., pp. 34, 54. See also, Creating Renewable Energy Opportunities, Utility-Corporate Buyer Collaborative Forum, June 2016." "Order Adopting a Clean Energy Standard," issued August 1, 2016, ("CES Order"), Case 15-E-0302 - Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, p. 87, fn. 66.

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

<sup>13</sup> These companies are referred to as the "RE100." Companies that have taken the RE100 pledge include Bloomberg, LP, Bank of America, UBS, Starbucks, Johnson & Johnson, Voya, and

As in other states, environmental claims made in the voluntary markets are measured and verified by national non-governmental organizations (“NGO”) such as the U.S. EPA’s Green Power Partnership,<sup>15</sup> Second Nature, the World Resources Institute (“WRI”), Carbon Disclosure Project (“CDP”) and Carbon War Room. These organizations require exclusive ownership of the REC’s by these corporate and institutional entities. REC’s are further employed by credit rating agencies such as Moody’s and Standard & Poor’s to measure and verify renewable energy and carbon reduction efforts for purposes of providing green bond ratings to corporate securities offerings.<sup>16</sup>

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Wells Fargo. Companies, RE100, <http://there100.org/companies> (last visited Sept. 27, 2016). Forty-three percent of the Fortune 500 companies have made similar carbon reduction commitments. World Wildlife Fund, et. al., Power Forward 2.0: How American Companies Are Setting Clean Energy Targets and Capturing Greater Business Value, available at [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwio64Ko2q\\_PAhUBcD4KHcNYCncQFggeMAA&url=https%3A%2F%2Fwww.ceres.org%2Fresources%2Freports%2Fpower-forward-2.0-how-american-companies-are-setting-clean-energy-targets-and-capturing-greater-business-value&usg=AFQjCNHvwEMogTRGw5IVxQ8oFmYApb1vsA&sig2=3VvytfDMNmJIMkJuLDIbA](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwio64Ko2q_PAhUBcD4KHcNYCncQFggeMAA&url=https%3A%2F%2Fwww.ceres.org%2Fresources%2Freports%2Fpower-forward-2.0-how-american-companies-are-setting-clean-energy-targets-and-capturing-greater-business-value&usg=AFQjCNHvwEMogTRGw5IVxQ8oFmYApb1vsA&sig2=3VvytfDMNmJIMkJuLDIbA) (last visited Sept. 27, 2016).

<sup>14</sup> There are currently more than 652 solar companies at work throughout the value chain in New York, employing 8,250 people. These companies provide a wide variety of solar products and services ranging from solar system installations to the manufacturing of components used in photovoltaic (PV) panels. See SEIA Fact Sheet “New York at a Glance” [http://www.seia.org/sites/default/files/NY%20State%20Factsheet\\_.6.15.2016.pdf#overlay-context=state-solar-policy/new-york](http://www.seia.org/sites/default/files/NY%20State%20Factsheet_.6.15.2016.pdf#overlay-context=state-solar-policy/new-york) (last visited September 29, 2016).

<sup>15</sup> *Supra* note 11.

<sup>16</sup> Green bonds are fixed income securities that are used to fund projects with clear environmental benefits, including renewable energy. Since REC’s are important to evidence the issuer’s ownership of the renewable attributes, green bond financings may necessitate REC possession. New Bonds Make it Easy to Be Green, Morgan Stanley, <http://www.morganstanley.com/articles/new-green-bonds> (last visited Sept. 29, 2016). See also Green Bonds Assessment, Moody’s Investor Services (March 30, 2016) available at [https://www.moody.com/research/Moody-publishes-methodology-on-Green-Bonds-Assessment--PR\\_346585](https://www.moody.com/research/Moody-publishes-methodology-on-Green-Bonds-Assessment--PR_346585).

NYSERDA's proposal undermines this key driver motivating these massive private undertakings. Granting NYSERDA's petition will destroy the value created by these companies and have a chilling effect on on-site development in New York. NYSERDA's Petition among other things asks the Commission to: (1) count the REC's of privately owned BTM projects toward the LSE mandatory RES obligation and (2) treat REC's from customer-sited projects that received *any* funding under NY-Sun and CST programs as LSE REC's "without further action by the LSE's." NYSERDA thus wishes to claim for the mandatory Renewable Energy Standard ("RES") program the environmental attributes associated with projects voluntarily undertaken, funded and built by private companies that received any grant funding from NYSERDA.<sup>17</sup>

NYSERDA's Petition neglects to discuss the consequences of its request - that by transferring on-site REC's to LSE's it will disqualify the environmental claims of hundreds of projects developed by New York corporations, universities, municipalities, counties and other citizens that, through 2015 alone, represent an approximately \$1 billion investment in New York.<sup>18</sup> NYSERDA's proposal will clearly undermine future on-site investment in New York. To be discussed in Section III below, NYSERDA's request is also unlawful as it violates NYSERDA's Participation Agreements entered into with on-site generators. NYSERDA's breach in turn will have a ripple effect under a host of third-party contracts

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<sup>17</sup> To be discussed, *infra*, NYSERDA's CST grant program should be contrasted, and not confused with, NYSERDA's Main Tier program which provides the bulk of project funding, primarily to mid- to large-scale renewable projects in New York.

<sup>18</sup> To be discussed, *infra*, the amount of grant funding to date for CST projects is relatively minor compared to Main Tier funding as well as a percentage of the total capital investment in on-site projects.

through which the REC's were sold, transferred or assigned to corporate and institutional customers and financial institutions.

The Commission properly recognized in its CES Order that, for the State to achieve its overall carbon reduction goals, it would need to depend on the voluntary efforts of private businesses to reduce their fossil fuel consumption.<sup>19</sup> To encourage such efforts, the Commission also recognized the importance to on-site generators of their claims to the REC's associated with their investments.<sup>20</sup> The Commission therefore found that implementation of its clean energy standards specifically account for voluntary emission reductions, including through private investment in BTM projects:

Concerns on whether the 50 by 30 goal may impose too high a regulatory burden conflate the State's overall clean energy goal of 50 by 30 with the more discrete effort to establish mandatory resource obligations on LSE's. The 50 by 30 goal is a cumulative outcome that will be achieved through a number of activities in addition to the LSE mandatory obligation. (emphasis supplied).

The approach taken here reflects the longer term, market driven and more comprehensive nature of REV and the RES as a component of this reform. In particular, the Commission anticipates that the trajectory for renewable development will be impacted by all forms of voluntary market activity. In other words, retail market participation, including customer behavior in terms of energy efficiency, behind the meter supply investments, supply mix, and hedging strategies, can and will impact the requisite level of mandated procurement in any given time period.<sup>21</sup>

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<sup>19</sup> As noted by the Commission, "Businesses and institutions as diverse as Walmart, Google, the State University of New York and the U.S. Military have adopted programs that increasingly rely on renewable resources due to their economic and environmental benefits. From 2012 to 2015, the capacity of publicly announced corporate renewable power purchases increased from 0.05 GW in 2012 to 3.23 GW in 2015." *Supra* note 11, CES Order at 87.

<sup>20</sup> [T]o ensure that in its totality the CES achieves the goals of a reliable clean energy industry in a cost-effective manner...[m]easures to achieve this will include...establishing markets for voluntary green products." *Supra* note 11, CES Order at 17.

<sup>21</sup> *Supra*, note 11, CES Order at pp. 77, 85.

To ensure the recognition of voluntary market efforts, the Commission rejected a Staff request to include 410,000 MWh's of load in the 2014 base forecast that NYSERDA estimated to be associated with BTM projects.<sup>22</sup> The Commission noted that the REC's associated with these projects may be registered by the project owner in order to claim the project's environmental attributes. The Commission therefore concluded that including the associated load in the RES base forecast would result in a form of double count:

### **No Behind-the-Meter Generation Adjustment**

Staff proposes to modify the base forecast by the addition of customer usage that is currently offset by behind-the-meter renewable generation. Staff proposes, for the purpose of calculating the 2014 base line, an addition of 410,000 MWhs based on NYSERDA estimates.

As a general principle, the Commission's concern in the RES is to calculate the level of load that all individual customers are placing on the electric system as the basis for establishing the level of load to be served by renewable resources. Where customers' consumption is offset by generation behind the meter, with the net result that no load is measured at the meter, whether the customers' consumption counts toward the base forecast depends on whether the generation results in REC's that are counted toward an LSE's RES compliance obligation.

However, this criterion creates a version of double counting if the load is being served by renewable resources and the owner of the renewable attribute wishes to receive REC's for the MWh production. In this circumstance failing to include the load associated with the REC would result in an underestimate of the amount of total demand that should be counted towards the 2030 goal. Ignoring such load is appropriate if the behind-the-meter generation is either not being registered in NYGATS or if such REC's are not counted towards the RES goal. In effect, as discussed below concerning voluntary consumer actions, the REC is retired. In this circumstance, neither the load associated with the renewable generation nor the generation itself is part of the program and the load will not count towards the RES goal.<sup>23</sup>

The Commission therefore rejected Staff's proposal to include BTM load under the mandatory RES program.

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<sup>22</sup> *Supra* note 11, CES Order at 79.

<sup>23</sup> *Id.* at 80.

Consistent with its CES Order, the Commission should clarify that the LSE obligation to purchase REC's for 2017 does not include any BTM load offset by BTM generation if the consumer has not of their own accord sold or otherwise opted to transfer ownership of the REC's from their BTM projects to the LSE.

## **II. NYSERDA's Proposal Conflicts with Federal EPA, FTC and NGO Rules and Protocols**

As noted, New York corporations, universities, non-profit organizations, municipalities, counties and other institutions have installed solar, wind, geothermal and other forms of renewable energy to reduce their carbon footprints. Fundamental to private industry efforts has been the adoption of independent third-party disclosure systems by which these investors can measure, manage and make claims toward achievement of their environmental targets.

To ensure the integrity of claims in the green markets, the U.S. Environmental Protection Agency ("EPA"), U.S. Federal Trade Commission ("FTC") and non-governmental organizations have established protocols and programs through which companies can measure, disclose and certify their progress toward their carbon reduction commitments.

A key requirement under these standards is the legal right of the entities to claim the "greenness" of electricity produced from the specified renewable resource. Under these rules, ownership of the REC evidences their right to claim the green attributes of the energy resource.<sup>24</sup>

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<sup>24</sup> The EPA defines a REC as "a market-based instrument that represents the property rights to the environmental, social and other non-power attributes of renewable electricity generation. RECs are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable energy resource." Renewable Energy Certificates (RECs), Green Power

FTC rules govern the use of REC's for claiming credit for emissions reductions.<sup>25</sup>

The FTC rules are intended to prevent persons from engaging in unfair or deceptive acts and practices in or affecting commerce, in violation of Section 5 of the FTC Act.<sup>26</sup> The FTC rules, as well as similar guidelines issued by the National Association of Attorneys General (“NAAG”), provide a regulatory basis for bringing complaints against companies making false statements or otherwise publishing false information.

The FTC rules provide that:

1. The REC's associated with a renewable power project represent the “greenness” of the electricity generated or consumed by the generator or consumer, respectively;
2. The REC embodies the right to claim the green attributes of the renewable energy project; and<sup>27</sup>
3. The environmental attributes of a renewable energy project may only be claimed once - by the entity that holds the REC's.<sup>28</sup>

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Partnership, EPA, <https://www.epa.gov/greenpower/renewable-energy-certificates-recs> (last visited Sept. 29, 2016). As MWs are continuously generated by a renewable energy facility, so too are RECs throughout the useful life of the renewable energy facility. Since a REC is an accounting mechanism for the right to the “greenness” of renewable generation, that greenness can only be counted once.

<sup>25</sup> 16 CFR Part 260, Federal Trade Commission Guides for the Use of Environmental Marketing Claims; Final Rule, (October 11, 2012).

<sup>26</sup> “It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable energy or that a service uses renewable energy. A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part of the advertised service, unless the marketer has matched such non-renewable energy use with renewable energy certificates.” *Id.* at § 260.15.

<sup>27</sup> *Id.*

The FTC rules are consistent with the Green-e Energy National Standard and the Green-e Energy certification program for renewable energy, administered by the Center for Resource Solutions (“CRS”). Green-e Energy is the leading certification program for voluntary renewable electricity products in North America, certifying a majority of the U.S. voluntary renewable energy market. Green-e certification requires that the consumer holds exclusive rights to the full suite of environmental attributes of generation. That includes the REC where the facility is registered in a tracking system. Where it is not, Green-e verifies exclusive contractual ownership of attributes/RECs. EPA’s Green Power Partnership, Second Nature and WRI similarly require exclusive ownership of the RECs in order to recognize renewable energy use.

In explaining its rules, CRS provides an example of a company that builds a wind project to meet its own electricity consumption needs and then sells the RECs to a third party. Under those circumstances the company loses its right to make claims as to the “greenness” of the power it consumes from that project.<sup>29</sup> Instead, the physical electrical output from the project must be characterized as “null” power with the attributes of the average system mix and assigned the average emissions of local generation. In short, without the RECs, the owner does not consume renewable energy from the project, cannot characterize its electricity as renewable, nor credit the energy’s environmental attributes toward its reduced carbon footprint and GHG reductions.

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<sup>28</sup> “If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.” *Id.*

<sup>29</sup> *Id.*

**A. The Commission Should Not Foreclose Development of a Voluntary Market**

As previously noted, the Commission has recognized that the State’s 50 x 30 goal is a “cumulative outcome” to be achieved through voluntary efforts as well as the LSE mandatory obligations.<sup>30</sup> The Commission identifies numerous voluntary initiatives to accomplish the State’s goals, including “consumer-initiated green energy purchases or investments, which will be encouraged through market-based incentives and a transparent certification program. . . .”<sup>31</sup>

Diverting third-party project REC’s to the State’s mandatory RES program would greatly constrain the Governor’s and the Commission’s goals. It would disqualify claims associated with hundreds of millions of dollars already invested in voluntary projects by New York’s corporate citizens and have a chilling effect on future investment by raising uncertainty regarding the viability of future clean energy investment in New York.

The Commission previously has found that inclusion of BTM load in the RES mandatory program will result in a potential double count and conflict with the “voluntariness” or “additionality” of the on-site renewable project, eliminating the right of the project owner to obtain Green-e certification for its project or to make legitimate claims in accordance with other established measuring and accounting protocols.<sup>32</sup> It also would

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<sup>30</sup> CES Order, *supra*, at 77.

<sup>31</sup> CES Order, *supra*, note 11 at 12. “We believe an important objective of the RPS program is to stimulate and complement voluntary/competitive renewable energy sales and purchases (or “green markets”) so that these competitive markets, not government mandates, sustain renewable activity after the RPS program ends.” See also “Order Regarding Retail Renewable Portfolio Standard,” issued September 24, 2004, (“RPS Order”), Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

<sup>32</sup> Fn. 23, *supra*.

adversely impact the green bond ratings of debt securities issued to build the project, foreclosing valuable funding sources otherwise available to finance renewable energy projects. BTM projects may also no longer qualify for Regional Greenhouse Gas Initiative (“RGGI”) voluntary market set-asides under New York’s regional carbon offset program needed for making voluntary GHG reduction claims.

Large multi-state companies have options in where to site and invest in their renewable energy projects to meet their national enterprise-wide goals. The Commission has been mindful of the need to remain competitive with other states that similarly seek to attract renewable energy investments. Depriving companies seeking to invest in New York of title to their project REC’s would fail to provide a competitive platform for attracting renewable projects to the State.

**III. On-Site Generators That Received NYSERDA Funding under CST and NY-Sun Own the Environmental Attributes Associated with Their Projects**

NYSERDA’s Petition seeks additional clarification from the Commission on the question of “how certain attributes associated with behind-the-meter generation funded by NYSERDA should be treated.”<sup>33</sup> NYSERDA asks the Commission to clarify “the status of attributes associated with NY-Sun and CST projects.”<sup>34</sup> The Commission Staff, in its Notice, characterizes NYSERDA’s inquiry as whether “new renewable resources from NY-Sun and other Customer-Sited Tier projects are to be counted towards the [RES] target without further action by the LSE’s.”

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<sup>33</sup> *Supra* note 4, Petition at 2.

<sup>34</sup> *Id.*

The Notice is somewhat ambiguous as to what the Staff considers to be “new renewable resources.” Elsewhere in its Notice it refers to “REC’s from renewable energy projects that were not in operation as of January 1, 2015.” If the Petition is intended to allocate to LSE’s REC’s from on-site renewable projects that have already entered into agreements with NYSERDA and are either in commercial operation or in construction, NYSERDA’s request could amount to a violation of those agreements and an unconstitutional taking of private property. NYSERDA previously advised on-site generators *prior to project construction* that their contracts granted them the right to make any and all claims and representations as to the renewable nature of the energy produced by their projects and of the owner/users consumption of that energy. Project owners relied upon these agreements and NYSERDA’s representations in making their investment decisions. NYSERDA now asks for the Commission to assign these valuable property rights to the LSE’s. In addition to being legally barred from making this request, NYSERDA is also estopped from seeking such relief under concepts of equitable estoppel. NYSERDA’s request therefore should be rejected on legal, equitable and policy grounds.

Unlike large-scale Main Tier projects, development of customer-sited renewable energy projects largely are driven by the on-site users’ rights to claim the environmental attributes of the projects.<sup>35</sup> When NYSERDA in 2005 began funding the Main Tier renewable projects, it also made funding available for smaller on-site renewable projects

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<sup>35</sup> Cornell University has previously stated to the Commission that it has pursued renewable energy projects in New York to advance its carbon neutrality goal by claiming the environmental attributes of these projects for the University.

through its CST program.<sup>36</sup> Unlike the Main Tier programs, the incentive funding for CST projects was provided because these “smaller facilities using emerging technologies...cannot compete economically with the larger projects.”<sup>37</sup>

CST project owners that applied for and received grant funding entered into participation agreements with NYSERDA. The funding recipients contractually agreed not to export the electricity from their projects outside the State. This was required by NYSERDA to ensure that the environmental attributes of the project remained in State so they could be reported by NYSERDA in assessing the State’s overall progress toward its renewable energy goals. This language remained in Operating Plans for the CST and NY-Sun program and each programs associated Participation Agreements up until the CES Order.

**A. BTM Owners Did Not Contractually Transfer their Project’s Environmental Attributes to NYSERDA**

When on-site generators entered into their Participation Agreements with NYSERDA, many of them sought, and received, assurances from NYSERDA that the environmental attributes of their projects belonged to the project owner/user. Despite providing these assurances, NYSERDA now seeks to reverse itself and argue that the project REC’s contractually belong to NYSERDA. NYSERDA’s argument is based on its interpretation of the following provision in the Participation Agreement:

Renewable Portfolio Standard (RPS) Attributes: Orders issued by the Public Service Commission provide that the RPS Program will support and promote an increase, to 30%, of the percentage of the energy consumed in New York

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<sup>36</sup> The CST/NY-Sun program stands in contrast to NYSERDA’s “Main Tier” program, under which NYSERDA expressly funded medium and large-scale renewable projects in exchange for receiving the renewable attributes of these projects. Main Tier Solicitations, NYSERDA, <https://www.nyserda.ny.gov/All-Programs/Programs/Main-Tier/Main-Tier-Solicitations> (last visited September 29, 2016).

<sup>37</sup> See Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard. Implementation Plan developed and approved by the Commission by Order issued April 14, 2005 (see Appendix A of Order); Docket No. 03-E-0188, fn. 6.

State that comes from renewable sources. When assessing and reporting on progress towards that goal, or on the composition of the energy generated and/or consumed in NYS, NYSEDA and the NYS Department of Public Service will include all electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program, regardless of the percentage of the project capacity included on the Bid Application Form, for the life of such projects, and the environmental attributes associated with such energy, whether metered or projected, as a part of any report, evaluation, or review of the RPS Program, whenever any such report, evaluation, or review may be conducted or issued, as renewable energy consumed in NYS. No party, including but not limited to owners, lessees/lessors, operators, and/or associated contractors shall agree to or enter any transaction that would or may be intended to result in the exportation or transmittal of any electrical energy created by any project receiving funds through the NYS RPS Customer-Sited Tier Program to any party or system outside of New York State.

NYSEDA argues that the above language, which it refers to as a “reservation of rights”, constitutes an agreement by the project owner to transfer the project’s REC’s to NYSEDA.

The provision, however, does not obligate the CST project owner to do anything, other than the last sentence in which it commits project owners not to export their electricity out of state. The remainder of the paragraph is simply a statement by NYSEDA of its intent to use information about the projects in “reports, evaluations and reviews” it prepares with respect to either: (1) the State’s progress toward the 30% RPS goal, or (2) the composition of energy generated and/or consumed in New York State. It does not require CST owners to do anything. NYSEDA’s intent to prepare reports regarding the amount of “renewable energy consumed in NYS” does not support NYSEDA’s claim to ownership of the REC’s. It is certainly not a “plain reading” of the contract, to say the least.<sup>38</sup>

NYSEDA’s reading also is contradicted by the last sentence in the same paragraph, under which the CST grantee agrees to refrain from selling or exporting the project’s

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<sup>38</sup> The Participation Agreement was drafted solely by NYSEDA. Grant recipients were forced to sign the agreement without alteration. It has long been the rule that ambiguities in a contractual instrument will be resolved *contra proferentem*, against the party who prepared or presented it.” A contract that is internally inconsistent in material respects or that reasonably lends itself to two conflicting interpretations is subject to the rule invoking strict construction of the contract in the light most favorable to the nondrafting party. Natt v. White Sands Condominium, 943 N.Y.S.2d 231 (NY. App. Div., 2012).

electricity outside of the State. This export prohibition was inserted by NYSERDA to ensure that the project's electricity remained in the State.

However, if the environmental attributes of the project had been transferred to NYSERDA in the prior sentences as NYSERDA now contends, then what would be the purpose of prohibiting the project owner from selling the power out of state? If the environmental attributes, via RECs or otherwise, had been transferred to NYSERDA then, under FTC and EPA rules, the CST project owner/user cannot claim consumption of green power from those facilities. Instead, it would be deemed to be "null" power with system mix attributes and a positive emissions profile. There would therefore be no logical basis for including this last sentence in the paragraph prohibiting the project owner from selling its energy out of state.

The more logical reading of the sentence is that the project's environmental attributes remained with the project owner, bundled with the electricity. Since the project owner owned the bundled electricity with the renewable attributes, NYSERDA required the owner to only sell the power within the State so that its environmental attributes could be counted toward the State's clean energy goals.

This is precisely the reading NYSERDA provided to CST project owners/users at the time. At the suggestion of the NGO's, several project owners at the time requested confirmation from NYSERDA that the project owner owned, and could make claims and representations regarding, its ownership of the environmental attributes of their renewable power projects.

In response, NYSERDA provided letters to the CST owners confirming that the environmental attributes belonged to the project owner/user. NYSERDA advised project owners and users that the contract provision was "self-explanatory." It therefore was "confirming" that for projects "for which we have provided financial incentives under the NY-Sun program" NYSERDA "does not and will not object to *any claim or representation by [the on-site generator owner/user] as to its investment in or use of the energy produced by the project, or to the environmental characteristics of that energy.*" NYSERDA additionally assured on-site generator project owners/users that it would not consider *a claim or representation* by the on-site generator developer or user *as to the renewable nature of the*

*energy produced by the project, or the customer's consumption of that energy... as a violation of or contradictory to NYSERDA's reserved rights.*"<sup>39</sup>

In short, NYSERDA interpreted the meaning of the Participation Agreements at the time they were entered into entirely differently than currently proposed by NYSERDA. CSTs conducted proper due diligence to avoid making any false claims or representations and received confirmation from NYSERDA that they were entitled to make any and all claims and representations under the Participation Agreement as to their projects' environmental attributes. CST project owners relied on NYSERDA's statements and interpretation of the agreement in making their decisions to invest in and construct their renewable energy projects.

**B. The CST Contract Language Should be Compared with, and Contrasted to, the Main Tier Project Language**

As noted earlier, the purposes of the Main Tier and CST programs are very different. In comparison to the language in the CST Participation Agreements, the Main Tier agreements, contemporaneously drafted by NYSERDA, served a different purpose. The Main Tier agreements contain detailed, lengthy and unambiguous provisions under which the Main Tier project owner expressly agrees to transfer the environmental attributes of its project to NYSERDA.<sup>40</sup>

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<sup>39</sup> A copy of one of these letters received by a CORE member is attached as Attachment A.

<sup>40</sup> See, e.g., NYSERDA Standard Form Main Tier Contract in RFP 2554:

Definitions:

RPS-eligible Attributes: Shall mean all environmental characteristics, claims, credits, benefits, emissions reductions, offsets, allowances, allocations, howsoever characterized, denominated, measured or entitled, attributable to the generation of Actual Eligible Production by a Bid Facility. One RPS-eligible Attribute shall be created upon the generation by a Bid Facility of one MWh of Actual Eligible Production....

RPS Attributes: The RPS-eligible Attributes associated with the Quantity Obligation which shall be delivered as performance during the Contract Delivery Term. (See Article II, Purchase and Sale of Rights to RPS Attributes).

Article II - Purchase and Sale of Rights to RPS Attributes:

Section 2.01. On the terms and subject to the conditions and provisions of this Agreement, Seller agrees to sell, assign, convey and deliver to NYSERDA, and NYSERDA agrees to

A quick perusal of almost any page of the Main Tier agreement demonstrates that NYSERDA clearly knew how to draft terms that unambiguously transfer the environmental attributes of a project to the agency. NYSERDA included none of these terms or language in the CST agreements. The obvious inference, confirmed by NYSERDA's letters, is that the CST Participation Agreements did not transfer the environmental attributes of CST projects to NYSERDA.

In short, whether based on a plain reading of the contract, on NYSERDA's assurances letters to CST owners and customers, by comparing NYSERDA's contemporaneously drafted Main Tier and CST contracts, or by applying rules under which the contract is construed against the drafter, NYSERDA's request to transfer the REC's from on-site projects to the LSE's must be rejected.<sup>41</sup>

### **C. NYSERDA's Request Could Trigger Other Contract Defaults**

A number of on-site generators entered into project financing arrangements under which the assets of the BTM project, including the environmental attributes, were assigned as

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purchase from the Seller, all right, title and interest in the RPS Attributes associated with the Quantity Obligation of the Bid Facility during each month of the Contract Delivery Term.

Section 2.02. Such right, title and interest shall include perpetual and exclusive rights to all RPS Attributes, including but not limited to the exclusive rights to claim or represent, consistent with New York State Environmental Disclosure rules: (a) that the energy associated with RPS Attributes was generated by the Bid Facility; and (b) that New York State and or the RPS Program is responsible for the environmental benefits including reductions in emissions and/or other pollution or any other environmental benefit resulting from the generation of the energy associated with RPS Attributes.

<sup>41</sup> NYSERDA's allegations are also undermined by its recent August, 2016 filing of an addendum to its NY-Sun Operating Plan and referenced Participation Agreement requiring participants to additionally agree to language stating that:

“NYSERDA will register all PV Systems that receive NY-Sun incentives in the New York Generation Tracking System (NYGATS) and will route any certificates created by the NYGATS for the PV Systems into a NYSERDA account.”

NYSERDA NY-Sun Operating Plan, 03-00188. Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard (August 2, 2016). If previous CST/ NY-Sun Participation Agreements as written already provide for NYSERDA's ownership of the RECs, then NYSERDA's rushed attempt to have NY Sun participants enter into an additional addendum would be quite unnecessary. Presumably this addendum is intended for prospective participants, and not for CST owners that have already commenced their projects in reliance on their existing contracts.

collateral to lenders to secure timely repayment of their loans. Generally, a borrower/sponsor under financing documents contractually warrants that it is the lawful and beneficial owner of the collateral, and agrees that any sale, transfer or other impairment of the collateral constitutes a default under the loan agreement. In other cases the developer receiving NYSERDA grant funding contractually assigned the REC's to the on-site renewable energy purchaser as part of a power purchase agreement ("PPA") or other arrangement to allow the energy user to make the environmental claims. NYSERDA's attempt to claim the REC's would result in a breach of those contracts. Thus, NYSERDA could potentially interfere with the integrity of existing on-site generator financing contracts, as well as undermine the potential to obtain financing for future projects where the REC's provide important collateral support for the project.

#### **IV. NYSERDA's Request Should be Rejected on Policy Grounds**

NYSERDA's request to count the environmental attributes of on-site renewable energy project owners against the LSE mandatory targets, as discussed, will deprive renewable energy project owners of claims to the renewable nature of the energy produced. It would disrupt the voluntary renewable energy markets, disqualify millions of dollars of investments claimed by New York's corporate citizens, and have a chilling effect on future investment.

##### **A. Nyserda's Petition is Founded on Erroneous Assumptions**

NYSERDA's request is founded on erroneous assumptions regarding the State's clean energy goals. NYSERDA's Petition is grounded in the beliefs that:

1. The State's 50 x 30 goal should be realized through the mandatory RES program;

2. REC's to satisfy LSE commitments must be predominantly supplied by NYSERDA;
3. NYSERDA therefore must take title to BTM REC's and register them in NYGATS in NYSERDA's name on behalf of the LSE's,<sup>42</sup> and
4. Allowing on-site generators to own their REC's will result in a double payment to on-site project owners.

NYSERDA's proposed policy path to 50 x 30 unnecessarily pits the mandatory RES program against the voluntary activities of the commercial and industrial sectors, when both efforts are needed to achieve the renewable energy and carbon reduction targets adopted by the State and the Commission.

NYSERDA's position understandably has been driven in part by the unique manner in which New York has implemented its renewable portfolio standards (RPS) requirements. Unlike other states, New York's RPS standard was established through a statewide renewables purchase program administered by and run through NYSERDA. NYSERDA was in the first instance responsible for satisfying statewide renewables targets. By contrast, the burden in other States is upon the incumbent utility to satisfy its RPS mandate – by constructing renewable power projects, entering into PPAs, purchasing REC's in the market, increasing energy efficiency and by other means of compliance.

This historical approach should not stand as an obstacle to working with NYSERDA to develop a robust and liquid trading market for REC's that encourages participation and competition in the New York REC trading market.

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<sup>42</sup> NYSERDA's petition is even more mystifying as it was engaged in good faith negotiations with CORE and others in an attempt to informally resolve the REC dispute but instead sought to join the issue before the Commission without notifying CORE.

**B. There is No Double Payment**

Commercial energy users, as previously noted, constitute the largest energy sector in New York. To satisfy their voluntary carbon reduction and renewable energy commitments, New York's corporations, universities and other commercial users through 2015 invested close to \$1 billion in solar PV projects alone. Over this same period, NYSERDA reported that it had expended roughly \$36 million on Competitive PV projects, and committed another \$163 million to Competitive PV projects for which it had not yet expended funds.<sup>43</sup> Assuming the time period for these reporting figures generally correspond, private funding for on-site renewable energy projects constitutes the vast majority of invested capital in these on-site projects.

NYSERDA's request, and contractual argument, is predicated in part on the belief that it must claim the on-site generator REC's for itself to avoid having ratepayers end up paying twice for the same REC - once in the form of the NYSERDA financial incentive paid the CST, and a second time if the CST owner sells its REC's either to an LSE or into the voluntary market.

The economic tenet of this double payment argument is erroneous for several reasons:

1. First, as noted, NYSERDA grants for CST/NY-Sun project on average represent approximately 10-15% of the total cost of an on-site generator (CST or NY-Sun) project.<sup>44</sup> The on-site generator invests or finances the remaining project costs. For example, for a \$1 billion investment in on-site renewable projects in the State, NYSERDA would

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<sup>43</sup> See NYSERDA Renewable Portfolio Standard Annual Performance Report through December 31, 2015, Appendix D.

<sup>44</sup> Newer projects (MW-Block funded) are closer to 85 – 90% investor capital funded but with older PONs NYSERDA did contribute as much as 30% to the projects.

provide a financial incentive of around \$100-\$150 million of that amount. The return realized to the State thus far outstrips the incentive payments.

Conversely, if, as a result of NYSERDA's proposal to claim the CST REC's for LSE's, the other \$850-\$900 million of private capital does not get invested in New York and the project never gets built, LSE's likely would be required either to construct the renewable power project itself, enter into PPA's with a renewable energy producer, or purchase REC's from out of state renewable projects. All of these options are much more costly alternatives to LSE's. Further, while out of state REC's legally are treated "as if" the project were located in New York, such REC purchases do not "in fact" bring with them an actual reduction in carbon and other GHG emissions in New York, nor provide the employment and other economic benefits associated with an in-state BTM project.

2. Second, NYSERDA's proposal claims the rights to the CST/NY-Sun REC's for the life of the on-site project. NYSERDA's "double payment" position therefore assumes that the CST/NY-Sun grant equals the value of the REC's earned over the life of the project. This is not the case. Hypothetically assuming a REC price of \$25/MWh, the value of the REC's over the life of the project in almost all cases would far outstrip the NYSERDA incentive payment.<sup>45</sup> Moreover, NYSERDA grant amounts have been awarded on a competitive basis and are in declining price blocks under Megawatt Block. There is therefore no particular correlation between REC valuations and NYSERDA project grants.

3. NYSERDA grant funding per project and per MW has decreased over time, while the value of REC's and carbon allowances presumably will be increasing. The current

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<sup>45</sup> A precise comparison of these amounts will depend upon several variables, including the grant amount, the capacity factor of the renewable project and the REC escalation rate.

Megawatt Block incentives start at \$0.63/W and fall to \$0.01/W.<sup>46</sup> There again is no correlation between the grant amount and value of REC's. If anything, the spread substantially expands over time between the two values. While the Megawatt Block grant program remains essential to on-site commercial solar development, the inability of project owners to receive the REC value of their projects effectively eliminates the competitiveness of New York for renewable projects.

4. NYSERDA's double payment argument assumes that all CST project owners will seek to monetize the value of their REC's by selling them to LSE's. This is quite untrue. Based on the long-term carbon and renewable energy commitments made by on-site project owners/users toward a net carbon zero footprint, and the fact that REC ownership is required in order to make and retain these carbon claims, it is likely that many or most of these companies will retain their REC's. Still others might seek to arbitrage their REC's in the market in exchange for like-kind allowances that would continue to count toward the State's overall 50 x 30 goals.<sup>47</sup> Thus the potential payments to CST projects that sell their REC's to LSE's would be a small fraction of the value assumed by NYSERDA.

5. CST/NY-Sun grant recipients have contractually committed not to sell their project's power out of State. Consistent with CORE's reading of the contract, this restriction was intended to retain the environmental attributes that were bundled with the electricity within the State. Thus, even if the REC's were to be traded in the market, they contractually

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<sup>46</sup> Commercial/Industrial Megawatt Block, NYSERDA, <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Project-Developers/Commercial-Industrial-MW-Block> (last visited September 29, 2016).

<sup>47</sup> The additional funds generated under these trades would in many cases be used to construct additional renewable energy projects in New York.

will be required to remain in the State. As a result, the REC's would continue to be counted toward the State's 50 x 30 goal and no additional REC's would need to be purchased to replace CST RECs.

6. As the State increases its focus and resources on Large Scale Renewable ("LSR") projects increasingly less grant funding is being made available to CST/NY-Sun projects. Thus, whatever minimal budget impact the sale of REC's within the State by CST's might have on NYSEDA, if any, the impact is even less so for future projects. By the same measure, the reduced grant funding increases the importance of ensuring that CSTs receive the value of their REC's to support the creation and competitiveness of new renewable projects in New York.

For the aforementioned reasons, the double payment issue is a misnomer and does not support NYSEDA's request to transfer CST project REC's to LSE's.

**V. NYSEDA's Request is Incompatible with the State's Planned Transition to a Successor to Net Metering**

In the Distributed Energy Resources ("DER") proceeding,<sup>48</sup> the Commission has announced that it intends to develop a successor payment structure to the current net metering program for on-site and "virtual" on-site renewable energy projects. While the successor formula has yet to be decided, much discussion is focused upon an LMP+D +E framework, in which the E reflects the environmental attributes of the distributed generation project.<sup>49</sup> Should the Commission grant NYSEDA's petition, BTM project owners/users

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<sup>48</sup> Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources.

<sup>49</sup> *Ibid.* See, e.g., "Comments of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas and

will effectively be stripped of their claims to the environmental attributes. As a result, NYSERDA's proposal might preclude new renewable projects from receiving the "E" portion of their payment and prevent them from qualifying at all for the successor to net metering and even interconnection rights.<sup>50</sup> If for no other reason, the Commission should deny NYSERDA's petition as it could foreclose consideration of many of the alternatives under review in the DER proceeding.

For the reasons stated above, having project owners retain the legal right to their REC's is compatible with and advances the Commission's REV and CES regulatory and policy objectives, including those sought in the DER proceeding.

## **VI. Conclusion and Recommendations**

Consistent with its CES Order, the Commission should clarify that the LSE obligation to purchase REC's for 2017 does not include any BTM load offset by BTM generation if the BTM project owner/consumer has not of their own accord sold or otherwise opted to transfer ownership of the REC's from their BTM projects to the LSE. CORE also recommends that the Commission make clear that:

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Electric, SolarCity, Inc., SunEdison, Inc., and SunPower, Inc. (collectively the "Solar Progress Partnership") in response to the Questions on the Value of Distributed Energy Resources and Options Relating to Establishing an Interim Methodology, (April 16, 2016).

<sup>50</sup> "As the State's Clean Energy Standard progresses, the Order directs that this value transition to the market price of Renewable Energy Credits ("REC") established in that program. Projects whose compensation structure includes a value for "E" under this process, including all customers receiving net metering credits, would forego the ability to retain or sell RECs, which would be transferred to the utility. It is recommended that the Commission allow each project to receive a stable externality value for the compensation term. Fluctuating and uncertain compensation for externality value can make it more difficult for developers to secure financing, set prices for customers, or determine a project's economic viability." *Id.* at 8.

1. CST projects REC's belong to the Project Owner/user;
2. CST project owners are entitled to register their projects with NYGATS and receive REC's for the output generated by their projects.
3. CST project owners can retire, transfer or sell their RECs as appropriate, i.e., within the State.

Finally, CORE recommends that the Commission convene a working group that includes the major stakeholders in the voluntary renewable energy markets. The working group should review, consider and make recommendations to the Commission on any aspects of the State's REV and CES programs that create potential conflicts between the fulfillment of the Commission's mandatory RES requirements and promoting the voluntary participation of New York's corporate citizens in the development of renewable energy projects. We recommend that the working group include representatives from the NGO's, NYSERDA, Commission Staff, LSE's, ESCO's and on-site renewable energy developers and users, including members of CORE.

Respectfully submitted,



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**ATTORNEYS FOR THE COALITION OF  
ON-SITE RENEWABLE USERS (CORE)  
ATTORNEYS FOR SECOND NATURE**

Dated: September 30, 2016  
Washington, D.C.

## New York Partners/Members under U.S. EPA's Green Power Partnership

3B Bed and Breakfast	Hotels & Lodging
4C Foods Corp.	Food & Beverage
Adelphi University	Education (Higher)
American Express	Banking & Fin. Svcs.
Aromafloria	Consumer Products
Bard College	Education (Higher)
Bedford Hill Coffee Bar	Restaurants & Cafes
Bloomberg LP	Media & Publishing
Boxcar Press, Inc.	Printing & Packaging
Catholic Health, Buffalo, NY	Health Care
Chadbourne & Parke LLP	Legal Services
Chelsea Piers	Recreation
Chop't Creative Salad Company	Restaurants & Cafes
Citi	Banking & Fin. Svcs.
City of Ithaca, NY	Govt. (Local, Municipal)

**ATTACHMENT A**

City of Watervliet, NY	Govt. (Local, Municipal)
Colgate-Palmolive Company	Consumer Products
Designtex	Clothing & Textile
Destiny USA	Real Estate
Deutsche Bank	Banking & Fin. Svcs.
Congregation Beit Simchat Torah	Religious
Country Life Vitamins	Consumer Products
Environmental Advocates of New York	Non-Profit (NGO)
Environmental Soil Management of New York	Ag. & Nat. Resources
Diamond Packaging	Printing & Packaging
Disc Graphics	Printing & Packaging
Ecobags	Retail
Empire State Building	Real Estate
RELX Group	Media & Publishing
Remains Lighting	Consumer Products
Themis and Thread	Consumer Products

**ATTACHMENT A**

Thornton Tomasetti	Architecture Svcs.
FAGE USA Dairy Industry, Inc.	Food & Beverage
Fields Good Chicken	Restaurants & Cafes
FirstService Residential / Manhattan Office including FS Energy	Energy Services
Fox Run Vineyards	Wineries & Breweries
Friends Academy	Education (K-12)
FXFOWLE Architects, LLC	Architecture Svcs.
Glens Falls Hospital	Health Care
Goldman Sachs Group, Inc.	Banking & Fin. Svcs.
Grace Church School	Education (K-12)
H&M	Clothing & Textile
Hamilton College	Education (Higher)
HARBEC, Inc.	Industrial Goods & Svcs.
Hobart and William Smith Colleges	Education (Higher)
Hofstra University	Education (Higher)
Houghton College	Education (Higher)

**ATTACHMENT A**

Informz, Inc.	Marketing, Advtg & PR
Internet Info	Technology & Telecom
iStoreGreen	Other
JPMorgan Chase & Co.	Banking & Fin. Svcs.
Ladies Village Improvement Society	Non-Profit (NGO)
Lake Placid Pub & Brewery	Wineries & Breweries
Lincoln Center, Inc.	Non-Profit (NGO)
Lycee Francais of New York	Education (K-12)
MetLife / Owner Occupied Office Facilities	Insurance
Mohawk Fine Papers Inc.	Ag. & Nat. Resources
Multi Packaging Solutions	Printing & Packaging
National Hockey League	Sports Teams & Venues
Natural Resources Defense Council	Non-Profit (NGO)
New York Mets	Sports Teams & Venues
Niki Jones Agency, Inc.	Marketing, Advtg & PR
Olo Acupuncture	Other

**ATTACHMENT A**

O'Melveny & Myers, LLP / New York Office	Legal Services
Pamela Love	Retail
Paul Smith's College	Education (Higher)
Price Chopper Supermarkets	Retail
PwC	Consulting Srvcs.
Quartier Printing	Printing & Packaging
Ralph Lauren Corporation	Clothing & Textile
Rochester Institute of Technology	Education (Higher)
S.W. Basics	Consumer Products
Saratoga Spring Water Company	Food & Beverage
SAS Industries, Inc.	Industrial Goods & Srvcs.
Simpson Thacher & Bartlett LLP	Legal Services
Skidmore College	Education (Higher)
Sony Corporation of America	Technology & Telecom
SRC Tec, LLC	Industrial Goods & Srvcs.
SRC, Inc	Non-Profit (NGO)

**ATTACHMENT A**

State University of New York at Cortland	Education (Higher)
Swiss Re	Insurance
Syracuse University	Education (Higher)
TerraNut	Consumer Products
The Bean	Restaurants & Cafes
The Brearley School	Education (K-12)
The British International School of New York	Education (K-12)
The City University of New York	Education (Higher)
The College of Saint Rose	Education (Higher)
The Estee Lauder Companies Inc. / Operations and <u>Selected Retail Brands</u>	Consumer Products
The Hewitt School	Education (K-12)
The Nathan Cummings Foundation	Non-Profit (NGO)
The Nightingale-Bamford School	Education (K-12)
The Phantom Laboratory, Inc.	Health Care
The Port Authority of NY & NJ	Transportation
The Spence School	Education (K-12)

**ATTACHMENT A**

The Town School	Education (K-12)
Tokio Marine Management, Inc.	Insurance
Tompkins County, NY	Govt. (Local, Municipal)
Town of Ithaca, NY	Govt. (Local, Municipal)
Troy & Banks, Inc.	Technology & Telecom
Ulster County, NY	Govt. (Local, Municipal)
Union College	Education (Higher)
University at Albany	Education (Higher)
University at Buffalo, the State University of New <u>York</u>	Education (Higher)
Velocity Print Solutions	Printing & Packaging
Viceroy Hotel / Central Park, New York	Hotels & Lodging
What If USA Ltd.	Consulting Svcs.
Willsboro Bay Marina, Inc.	Transportation
WSP ParsonsBrinckerhoff/US Headquarters	Constr. & Eng. Svcs.
YellowPagesGoesGreen.org	Technology & Telecom
Zotos International	Consumer Products



**JOHN B. RHODES**  
President and CEO

**RICHARD L. KAUFFMAN**  
Chair

February 27, 2015



This is to explain and confirm the New York State Energy Research and Development Authority's (NYSERDA) position with respect to the environmental attributes associated with the City's photovoltaic renewable energy project, for which we have provided financial incentives under the NY-Sun program. In summary, NYSEDA does not and will not object to any claim or representation by the City as to its investment in or use of the energy produced by the project, or to the environmental characteristics of that energy.

As you are aware, under the rules and regulations of the NY-Sun program, the contracts that NYSEDA awards for financial incentives include the following reservation of rights provision, and require that it be included in all customer agreements:

Orders issued by the Public Service Commission provide that the RPS Program will support and promote an increase, to 30%, of the percentage of the energy consumed in New York State that comes from renewable sources. When assessing and reporting on progress towards that goal, or on the composition of the energy generated and/or consumed in NYS, NYSEDA and the NYS Department of Public Service will include all electrical energy created by any project receiving funds through the NYS Customer-Sited Tier Program, regardless of the percentage of the project capacity included on the Bid Application Form, for the life of such projects, and the environmental attributes associated with such energy, whether metered or projected, as a part of any report, evaluation, or review of the RPS Program, whenever any such report, evaluation, or review may be conducted or issued, as renewable energy consumed in NYS.

**New York State Energy Research and Development Authority**

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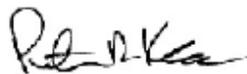
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(F) 716-942-9961

## ATTACHMENT B

While we hope this language is self explanatory, let me reiterate that NYSERDA does not and will not consider a claim or representation by the City as to the renewable nature of the energy produced by the project, the City's consumption of that energy, or any other factually founded statement regarding the project as in violation of or contradictory to NYSERDA's reserved rights. Please feel free to contact me at 518.862.1090, ext. 3366 or [peter.keane@nysesda.ny.gov](mailto:peter.keane@nysesda.ny.gov).

Sincerely:

A handwritten signature in black ink, appearing to read "Peter Keane".

Peter Keane  
Deputy Counsel