September 30, 2016

Honorable Kathleen H. Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223–01350

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

Dear Secretary Burgess:

Following the Public Service Commission's (the "Commission") release of its Order Adopting a Clean Energy Standard ("CES Order"),[1] the New York State Energy Research and Development Authority ("NYSERDA") requested clarification regarding the treatment of Renewable Energy Credits ("RECs") generated by behind-the-meter ("BTM") resources in its Petition.[2] In its subsequent Notice Soliciting Comments on Request for Clarification ("Notice"),[3] the Commission described the Petition as seeking "clarification regarding the status of attributes associated with NY-Sun and other Customer-Sited Tier projects in light of the CES Order's filing requirements requesting NYSERDA to publish the number of Renewable Energy Credits ("RECs") that will be available for sale for the 2017 compliance

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[1] Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard* ("CES Proceeding"), Order Adopting a Clean Energy Standard (issued August 1, 2016) ("CES Order").
[2] CES Proceeding, Petition [Seeking Clarification Regarding the Status of Attributes Associated with NY-Sun and Other Customer-Sited Tier Projects] (filed August 25, 2016) ("Petition").
[3] CES Proceeding, Notice Soliciting Comments on Request for Clarification ("Notice")(issued September 12, 2016), p.3. The Commission expressly limited these comments to the clarification of the 2017 target. *Id*., p.2. In doing so, the Commission observed that the move from the current net energy metering compensation mechanism to a LMP+D approach will be the appropriate time to revisit the question of how behind-the-meter resources should be considered. *Id.*, p.2, citing CES Order, p.81. The Commission also noted it will further consider the issues of customer participation in the voluntary market and customer ability to claim attributes associated with voluntary projects in addition to and as informed by the foregoing transition to an LMP+D approach. *Id.*, pp.2-3, citing CES Order, p.89.

period by December 1, 2016."[4] Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, and Orange and Rockland Utilities, Inc. (collectively, the "Indicated Joint Utilities") respectfully submit these comments in response to the Notice.

I. Introduction

In the Notice, the Commission explained that the CES Order set the percentage of the total 2017 load to be served by new renewable resources at 0.6 percent, which would equate to an obligation for Load Serving Entities ("LSEs") to purchase approximately 974,000 RECs in 2017.[5] The Commission directed that notice be taken that the Staff of the Department of Public Service ("Staff") advises that:

> in setting the 0.6% target, it was estimated that 953,000 MWh of new renewable resources were to be available from NY-Sun and other Customer-Sited Tier projects to be counted towards the target, and that only 21,000 MWh of RECs from renewable energy projects that were not in operation as of January 1, 2015 were estimated to be available to NSYERDA for sale to Load Serving Entities (LSE) during 2017.[6]

Staff further advised that the language of the CES Order did not render that nuance clear, particularly with respect to Ordering Clause No. 3, thus leading to the Petition.[7] Accordingly, the Commission stated that it is considering whether to clarify that the

> LSE obligation to buy RECs for 2017 related in total only to the estimated number of RECs from renewable energy projects that were not in operation as of January 1, 2015 that will be available to NYSERDA for sale to LSEs during 2017, and that the new renewable resources from NY-Sun and other Customer-Sited Tier projects are to be counted towards the target without further action by the LSEs.[8]

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[4] CES Proceeding, Notice, p. [1]. The Commission observed that the Petition did not seek rehearing of the CES Order. *Id.*
[5] CES Proceeding, Notice, p.[1], citing CES Order, p.92.
[6] CES Proceeding, Notice, pp.[1]-2.
[7] *Id*.
[8] *Id*.

The Commission asked that it further be noted that the 21,000 MWh of available RECs was an estimate valid as of the date of the issuance of the CES Order, and directed that by December 1, 2016, NYSERDA publish on its website pursuant to Ordering Clause No. 5 of the CES Order the "actual quantity of RECs NYSERDA expects to have available for sale during the 2017 compliance period."[9]

II. Comments

The Indicated Joint Utilities' own modeling of clean energy resources aligns with Staff's clarification that the vast majority of the CES-eligible RECs will be generated by BTM resources through 2020, and that BTM resources will remain a significant source of RECs through 2030. Furthermore, it appears that the ownership and control of these BTM RECs is not clear. BTM resources in New York have generally received funding, subsidies or incentives from multiple sources, including NYSERDA, the jurisdictional electric utility and its customers (via net energy metering), the federal and state governments (via tax credits or waivers) and from the BTM resource owner itself. All entities that provided the financial means for the BTM resources to be built could conceivably make a claim of ownership of the REC. Recent customer activities reported in the press suggest that some customers are already asserting ownership and selling RECs,[10] which may result in the same REC being counted for compliance or retirement purposes twice and thereby undermine the REC marketplace the Commission envisioned in the CES Order. This highlights the importance of establishing ownership and control of BTM RECs, as well a mechanism to account for them, both for the year 2017 and beyond. Regardless of the approach to be implemented, the

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[9] *Id*.

[10] National Public Radio, "How Blockchain Helps Brooklyn Dwellers Use Neighbors' Solar Energy," http://www.npr.org/sections/alltechconsidered/2016/07/04/482958497/how-blockchain-helps-brooklyn-dwellers-use-neighbors-solar-energy, accessed on September 28, 2016.

Indicated Joint Utilities respectfully urge the Commission to include a mechanism that clarifies which entity owns title to the REC when it is created and, if the REC is sold, legally transfers the title of the REC to the purchasing party to avoid double counting. The Indicated Joint Utilities agree that this issue should be settled as part of the Value of Distributed Energy Resources proceeding[11] ("Value of DER Proceeding") currently underway.

Recognizing that discussions within the Value of DER Proceeding will not conclude in time for 2017 CES compliance, an interim approach is necessary. The Indicated Joint Utilities agree with the Commission's suggestion to remove the BTM RECs from the CES obligation of all jurisdictional LSEs for 2017. This effectively asserts that for 2017 these BTM RECs are owned collectively by all electric customers of the jurisdictional utilities in the State, because they have already supported the development of those resources financially through a combination of programs, and therefore should be used to benefit those electric customers. The administrative simplicity of this approach is particularly appropriate given the short implementation timeframe and the ongoing discussions within the Value of DER Proceeding.

However, in 2018 and beyond, an alternative approach could be considered that more fairly allocates BTM RECs to customers in proportion to their contribution to funding the BTM resources that generate RECs. As stated above, all jurisdictional utility customers provide incentive funding to BTM resources in several ways, most significantly through NYSERDA's NY-Sun Incentive Program and Renewable Portfolio Standard ("RPS") Customer-Sited Tier ("CST") programs as well as through net energy metering. The

[11] Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources*, Notice Soliciting Comments and Proposals on an Interim Successor to Net Energy Metering and of a Preliminary Conference (issued December 23, 2015) ("Value of DER Proceeding").

Commission should consider a REC allocation approach that recognizes these customer contributions and prevents certain customers from effectively shouldering a higher burden of CES-related costs than others.[12] One approach could set the annual REC obligation for each LSE based on the utility service territory make-up of its customers, reflecting the funding provided by all customers to BTM resources in that service territory. Any alternative will take time to implement because a methodology will need to be developed in order to: (1) establish LSE obligations, as LSEs will likely have different REC obligations in each of the service territories where they serve customers (LSEs typically are active in multiple service territories and their customer mix is continually changing); (2) calculate a REC obligation reflecting the costs of net metering, recognizing that these costs differ by customer class and utility service territory; (3) transfer funds among utility service territories to the extent BTM resources generate more RECs than can be used to offset obligations in a given utility's service territory; and (4) provide that net energy metering customers contribute their fair share to meeting the CES.

III. Conclusion

The Indicated Joint Utilities agree with the Commission's proposed approach to use CES-eligible BTM RECs to reduce the 2017 REC obligation for all jurisdictional LSEs as an interim measure. However, a mechanism must be developed that will more fairly allocate RECs to the customers who have paid for them via net energy metering and NYSERDA surcharges on their electric bills beginning in 2018. The Indicated Joint Utilities look

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[12] Customers residing in certain electric utility service territories support a higher level of net energy metering related cost-shifting than those in others, leading to higher overall individual contributions to the CES goals, while customers receiving net energy metering may pay very little into these programs (*i.e.*, the NY-Sun Incentive Program and RPS CST program), if at all, resulting in a lower overall contribution to CES goals.

forward to working with the Commission, Staff, and other stakeholders in the development of this approach, both through the CES Proceeding and within the Value of DER Proceeding.

Respectfully submitted,

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