

Maureen O. Helmer
Partner

November 14, 2016

VIA ELECTRONIC MAIL

The Honorable Kathleen H. Burgess
Secretary to the Commission
New York Public Service Commission
Empire State Plaza
Albany, NY 12223-1350

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

Dear Secretary Burgess:

On behalf of Brookfield Renewable, please accept the attached Response of Brookfield Renewable in response to the Commission's September 7, 2016 Notice with Respect to Requests for Rehearing and Reconsideration of the Commission's Order Adopting a Clean Energy Standard in the above-referenced proceeding.

Very truly yours,



Maureen O. Helmer
Counsel for Brookfield Renewable

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**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.) Case 15-E-0302
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**RESPONSE OF BROOKFIELD RENEWABLE
REGARDING PETITIONS FOR REHEARING AND
RECONSIDERATION OF THE COMMISSION’S
CLEAN ENERGY STANDARD ORDER**

In accordance with the Public Service Commission’s (“Commission’s”) September 7, 2016 Notice with Respect to Requests for Rehearing and Reconsideration (“Petitions”) of the Commission’s Order Adopting a Clean Energy Standard (“CES Order”),¹ Brookfield Renewable submits the following response to the Petitions of the various parties. Brookfield Renewable continues to be a staunch supporter of the Clean Energy Standard (“CES”)² assuming it is implemented on a non-discriminatory basis so that the benefits will inure to all New Yorkers while maintaining reliability of the electric grid and environmental sustainability through renewable resources in New York.

¹ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Notice with Respect to Requests for Rehearing and Reconsideration (Issued Sep. 7, 2016).

² Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting a Clean Energy Standard (Issued Aug. 1, 2016) (“CES Order”).

A consistent theme resonated throughout many of the Petitions, namely that the CES should apply equally to all zero-emitting sources of electric generation. In addition, there was clear consensus from major stakeholders that the program to be implemented under the CES Order was not what was discussed, analyzed or even contemplated in the current record or indeed, since the proceeding commenced in February 2015, almost two years ago. Brookfield Renewable sincerely appreciates the time and effort by the Commission, Department of Public Service Staff (“Staff”), stakeholders, industry groups, associations, and renewable generators alike in contributing to the record and the creation of the CES. Brookfield Renewable believes that the CES Order can and should be strengthened, particularly with respect to the inclusion of existing renewable, non-emitting resources, in order to avoid needless delay in implementation, help mitigate future legal challenges, and to ensure a successful and cost-efficient program. To that end, the Commission should grant reconsideration or limited rehearing of the CES Order to expand the record to cover previously un-vetted aspects, and to ensure existing renewable resources have meaningful opportunities for participation, which will address inherent risks and inefficiencies in the program.

At its core, the Commission is faced with a decision as to whether it wishes to either: A) incent all of New York’s uncontracted, existing, qualified renewables to export from the state and replace it with a combination of more expensive new-build wind and solar (plus additional gas-fired resources for balancing these intermittent resources); or B) put in place a market-based mechanism that recognizes the full value of all non-emitting generation, including existing resources, in a non-discriminatory manner, which will not only keep this existing and cost-effective generation in-state to benefit New Yorkers but would also lead to the possibility of cost-effective clean energy imports from other jurisdictions. The current CES decision

unfortunately exposes New York to all the risks and irreversible ratepayer burdens of the first pathway, without any of the commensurate benefits of the second. These points have been clearly articulated on the record through the various petitions for rehearing that have been filed with the Commission, as discussed further herein.

I. BACKGROUND

As a relevant stakeholder, Brookfield Renewable has been an active participant and contributor to the CES proceeding to help ensure the program will be sustainable, cost-efficient to ratepayers, and non-discriminatory in both the near and long term. In furtherance of those goals, Brookfield Renewable submitted a Petition for Reconsideration or, in the Alternate, Limited Rehearing on the Commission's CES Order to ensure all existing privately-owned hydroelectric power can participate in the CES.³

In its Petition, Brookfield Renewable highlighted the need for existing hydroelectric facilities to participate in the CES either through inclusion in the Renewable Energy Credit ("REC") market, or via compensation aligned with nuclear generation under the Zero Emission Credit ("ZEC") program, as well as by permitting Load Serving Entities ("LSEs") to offset their CES obligations through contracts with privately-owned legacy resources.⁴ In sum, Brookfield Renewable noted that:

- The exclusion of large-scale legacy hydropower in attainment of the goals of the CES without any compensation is both unjust and discriminatory, which will result in

³ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Brookfield Renewable's Petition for Reconsideration or, in the Alternate, Limited Rehearing (Aug. 31, 2016).

⁴ Currently, the CES Order provides no competitive compensation for existing non state-owned hydroelectric facilities when those same facilities have been a critical component in achieving the energy profile New York currently enjoys in terms of the level of renewable resources as well as the associated decreases in CO₂ emissions and greenhouse gases.

economic free-ridership by the State on the benefits of non state-owned non-emitting generation.

- As drafted, the CES Order would significantly hamper New York’s renewable goals, especially its baseline, with no possibility to modify such *fait accompli* once the CES is implemented.
- Market opportunities for existing renewable generation already exist outside of New York and are increasing, including a new law passed in Massachusetts that provides direct opportunities for exports of New York’s existing hydropower and attributes. These opportunities are immediate and near-term, highlighting the urgent need to address this issue now, and not await a future CES review cycle in 3 years.
- If renewable resources cannot participate and are forced to sell into other markets, or if they are forced to cease operations over time, the State’s need to replace these with more expensive new construction will increase the overall cost of achieving Governor Cuomo’s goal of generating 50 percent renewable energy by 2030 (the “50 by 30 goal”).
- Hydropower greater than 5 megawatts (“MWs”) should not be excluded from the CES.
- The CES Order, as drafted, may potentially result in double-counting to the extent that New York attempts to continue to include them in its baseline while other states begin counting these resources towards their renewable goals. The record contains no policy regarding how the state will specifically avoid actual and perceived double-counting in its targets.

II. NEW YORK'S HYDROELECTRIC POWER

New York has been a leader in generating zero-emission electricity from hydroelectric power for decades. Beyond the significant contributions toward lowering carbon dioxide (“CO₂”) and other air emissions across the State as well as increasing New York’s renewable energy profile, the hydropower industry in New York has made significant contributions to the State in other ways. New York can boast:

- Over 150 hydroelectric facilities;
- Over 1,200 megawatts (“MWs”) of non-state owned hydropower capacity;
- Approximately 5 million megawatt hours (“MWh”), or 5 Terawatt Hours (“TWh”), of electricity are produced by New York’s non state-owned hydroelectric facilities;
- Over 325 New Yorkers are directly employed by the non state-owned hydropower industry with another 325 jobs provided indirectly;
- Approximately \$40 million in local property taxes is from hydroelectric facilities, and is frequently the largest single contributor to a local municipality’s tax base; and
- Annual spending of at least \$70 million per year, with substantial economic spin-off benefits beyond the annual spending.

In addition to these quantifiable benefits, hydroelectric facilities provide tangible and intangible environmental and societal benefits such as dam maintenance and repair, environmental stewardship, water quality, and recreational opportunities – functions that would otherwise be the responsibility and financial burden of the State. Clearly, hydropower, as an existing renewable resource, is critical to New York in a number of ways, and will prove to be crucial toward New York’s attainment of Governor Cuomo’s 50 by 30 goal. Therefore, any diminishment in value, capacity, or generation from New York’s hydropower will have a long-

lasting, negative impact on the State. However, through creation of a robust and non-discriminatory CES, hydropower can continue to sustain New York and its renewable goals.

Moreover, hydropower can be further optimized to the state's benefit as well as that of the local communities, both through upgraded equipment and operating approaches, and through voluntary certification programs such as the Low Impact Hydropower Institute. Such certification results in additional operating costs, but provides additional parameters that focus on intangible value aspects to the state, including fish passage, recreational benefits and other community and environmental benefits. If value of these facilities is better recognized through the CES it serves as a catalyst for long-term upgrades and optimization of these facilities, as well as direct growth in the industry, which otherwise is more difficult if the facilities are already exporting out of the state or have been closed.

III. RESPONSE TO THE VARIOUS PETITIONS FOR REHEARING

Brookfield Renewable's concerns regarding the CES Order and the bases for its request for reconsideration and limited rehearing were echoed by a number of other parties in their respective Petitions. At the core of the issues expressed in the many Petitions is that existing renewable resources must be allowed meaningful participation and compensation in the CES in order to ensure viability, longevity, and cost-effectiveness of the CES. Without inclusion of the very resources that have helped New York achieve its impressive renewable profile, the State risks not meeting the 50 by 30 goal at the least cost to ratepayers. At a minimum, excluding existing renewable resources will increase the overall cost of the program by requiring support for new, more expensive resources.

It should be noted that Brookfield Renewable's concerns regarding the final CES Order were expressed by a diverse range of stakeholders, who in other circumstances, often have

competing and divergent interests. That diverse parties agree on the same issues further demonstrates the clear need for reconsideration or limited rehearing of the existing CES Order, as is presented below.

A. Exclusion of Tier 2 Existing Renewable Resources from the CES and Imposition of a Maintenance Tier is Not Supported by the Record

As asserted in Brookfield Renewable’s Petition and echoed by the Alliance for Clean Energy New York (“ACE NY”), ReEnergy Holdings (“ReEnergy”), Energy Ottawa, and RENEW Northeast (“RENEW”), imposition of a Maintenance Tier and the exclusion of existing renewable resources from participating in the Renewable Energy Standard (“RES”) is not supported by the vast record in the CES proceeding,⁵ which had evaluated existing resources as part of a Tier 2 and included participation in the REC market.⁶

In order to survive a legal challenge, the Commission’s decision must not be arbitrary and capricious. A challenger would likely allege that the Commission’s decision was, in fact, arbitrary and capricious because the CES Order was not adequately supported by the underlying record. Throughout consideration of the CES in this proceeding, discussions of the Clean Energy Standard (including the Staff White Paper⁷ and the numerous technical workshops held by the Department) have included evaluation of existing renewable resources in the REC market. The record for the CES proceeding is devoid of any discussion, cost-benefit analysis, or

⁵ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Alliance for Clean Energy New York, Petition for Rehearing or Clarification of the Order of August 1, 2016 Adopting a Clean Energy Standard, 4-5 (Aug. 31, 2016) (“ACE NY Petition”); RENEW Northeast, Petition for Rehearing of RENEW Northeast, Inc., 2-3 (Aug. 31, 2016) (“RENEW Petition”); ReEnergy Holdings LLC, ReEnergy Holding LLC’s Petition for Rehearing, 5-6 (Aug. 31, 2016) (“ReEnergy Petition”); Energy Ottawa Inc., Petition for Rehearing of Energy Ottawa Inc., 12-14 (Aug. 31, 2016) (“Energy Ottawa Petition”).

⁶ See Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Staff White Paper on Clean Energy Standard (Jan. 25, 2016) (“CES White Paper”).

⁷ *Supra*, note 6.

implication that the CES would not include existing resources in either a market mechanism or through some other form of compensation. Furthermore, the record contains no discussion of the imposition of a Maintenance Tier nor the criteria to qualify as such. The first time the concept of abandoning Tier 2 participation in the CES replaced a vague suggestion that some form of support might eventually be provided through Maintenance Tier contracts was in the CES Order.

As observed by Energy Ottawa, ReEnergy, and ACE NY,⁸ the LSR Options Paper⁹ and the CES White Paper noted that a new policy that contemplated more than maintenance contracts would be needed to stimulate value for legacy renewable resources and mitigate exports to other regions.¹⁰ Therefore, in addition to lack of adequate record support for imposition of limited maintenance contracts, the record appears to contradict the decision that maintenance contracts would be an appropriate vehicle to provide value to legacy renewables.

Without reconsideration or limited rehearing during which the many parties and Staff can thoroughly evaluate and provide comments on these aspects, much of the CES Order remains at risk to judicial challenge, potentially delaying implementation of the entire CES. Any such judicial challenge would be a major set-back toward attainment of the 50 by 30 goal as well as a major set-back for the two years of work by the Commission, stakeholders, industry groups, associations, and renewable energy generators. Therefore, reconsideration or limited rehearing of the CES Order to adequately supplement the record is necessary to the expedient

⁸ ACE NY Petition at 5; Energy Ottawa Petition at 9; ReEnergy Petition at 8-9.

⁹ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Large-Scale Renewable Energy Development in New York: Options and Assessment (filed June 1, 2015) (“LSR Options Paper”).

¹⁰ LSR Options Paper at 114; CES White Paper, Appendix D at 5 (“In the absence of a New York policy that creates sufficient value for RECs from Legacy RPS Projects, the energy and RECs from most of these resources are likely to leave the market, most likely to the New England states, as their owners search to maximize revenues.”).

implementation of the CES, and is supported by numerous stakeholders. Other issues not adequately supported by the record, as referenced in the Petitions, are discussed below.

B. Electricity and Attributes from Existing Renewables Resources Should Not be Counted Towards Achievement of the 50 by 30 Goal Without Adequate Compensation

A common theme in a number of the Petitions is that New York should not count existing renewables toward achievement of the 50 by 30 goal without adequately compensating those existing renewables by either inclusion in the RES or through some other form of compensation.¹¹ Transmission Developers Inc. (“TDI”) suggested that any incremental renewable energy that currently qualifies in the renewable baseline that is purchased by a Load Serving Entity (“LSE”) should count towards the 50 by 30 goal and, thus, reduce the number of RECs that would need to be purchased by the LSE.¹² Brookfield supports the recognition of non-state owned hydropower generation that contributes to the renewable baseline by offsetting the obligations of an LSE under the CES program, and further asserts that recognition should extend beyond “incremental” renewable generation. Similarly, Independent Power Producers of New York (“IPPNY”), RENEW, and ACE NY proposed that the Commission should allow all existing renewable resources to sell RECs to LSEs to meet LSE obligations under the CES.¹³ Brookfield Renewable agrees.

Energy Ottawa asserts that the Commission lacks the authority to claim as its own or as belonging to the State the environmental attributes which are the rightful property of the

¹¹ ACE NY Petition at 6-7; ReEnergy Petition at 9-10; RENEW Petition at 3; Energy Ottawa Petition at 10; H.Q. Energy Services (U.S.) Inc., Petition for Rehearing of H.Q. Energy Services (U.S.) Inc., 21 (Aug. 30, 2016) (“HQUS Petition”).

¹² Transmission Developers, Inc., Petition for Rehearing of Transmission Developers, Inc., 2-3 (Aug. 31, 2016) (“TDI Petition”).

¹³ IPPNY Petition at 5; ACE NY Petition at 9-10; RENEW Petition at 3.

renewable generators.¹⁴ It is important to note that RECs from existing resources can and will be sold separate and apart from energy generated in New York,¹⁵ and that once that REC is sold outside of New York, it should be retired and not be claimed as part of New York's CES. Therefore, although existing resources have contributed to and are counted in New York's baseline, going forward, those attributes may not be available to meet the 50 by 30 goal. Otherwise, on its face, the CES would show a decrease in CO₂ emissions and show a concomitant increase in renewable generation in New York, but such claims would be wholly inaccurate if that same energy is being sold and consumed outside of New York or if the RECs are being purchased by out-of-state entities.

As noted in the Petitions, New York should not be allowed to count energy or attributes from existing renewables that are not participants in or compensated under the CES.¹⁶ To allow otherwise would undermine the purpose and goals of the CES, risk double counting of RECs, overinflate the benefits to New York under the CES, may jeopardize certification of RECs elsewhere,¹⁷ and will cause confusion regarding sales of RECs from existing resources into other markets.¹⁸ Simply stated, New York cannot claim that all the existing renewable resources located in New York are contributing to the CES and 50 by 30 goal if either the energy or REC is exported out of New York, or if the renewable energy attribute generated in New York is not paid for.

¹⁴ Energy Ottawa Petition at 10.

¹⁵ See HQ Petition at 16.

¹⁶ See generally, Energy Ottawa Petition; ACE NY Petition; HQUS Petition.

¹⁷ ACE NY Petition at 7.

¹⁸ ACE NY Petition at 7; HQUS Petition at 16-17.

Therefore, Brookfield Renewable joins with other Petitioners that request reconsideration or rehearing on the basis that existing renewable energy that is generated in New York should not be counted toward the CES and the 50 by 30 goal unless the environmental attributes from that source are appropriately compensated.

C. Material Revenue Opportunities are Available Outside NY for Existing Resources

The newly-enacted legislation in Massachusetts regarding expanded opportunities for renewable energy, including existing sources located beyond its own borders, was cited by a number of Petitioners including IPPNY, ACE NY, and Energy Ottawa.¹⁹ The Massachusetts legislation, *An Act Relative to Energy Diversity*, was enacted shortly after the CES Order was issued.²⁰ As such, it presents new circumstances that were not considered in the CES Order. Moreover, while the CES Order dismissed evidence that there are ample opportunities for existing renewables in New York, that Massachusetts was considering new legislation to expand its renewable portfolio demonstrates that the CES Order was based on an error of fact as the level of competition from other states was, in fact, increasing while the CES was being developed.

The Commission indicated it may, at a later date, review the effect of other out-of-state programs and if, and to what extent New York renewables are exporting to other areas or finding other markets for their RECs. However, this ignores the current evidence in the record that significant opportunities exist now and in the near-term that will have long-lasting and

¹⁹ Independent Power Producers of New York, Petition for Rehearing of Independent Power Producers of New York, Inc., 5 (Aug. 31, 2016) (“IPPNY Petition”); ACE NY Petition at 6; Energy Ottawa Petition at 9.

²⁰ An Act Relative to Energy Diversity, H.4568 (Approved Aug. 8, 2016).

detrimental effects on the CES. These impacts cannot be undone once the resource is committed elsewhere.

New England's Class II Renewable Portfolio Standard (RPS) and Tier 1 programs in PJM already provide immediate opportunities for export. In April 2017, Massachusetts plans to issue a Request for Proposals (RFP) to procure up to 9.45 TWh of hydroelectric generation, for which all of New York's hydropower would be eligible. New York's entire non state-owned portion represents less of the half of the Massachusetts procurement target. Connecticut's RPS program offers up to an additional 2.75 TWh of eligibility for New York hydropower as a balancing resource. One Connecticut RFP has already been issued, with future rounds expected to be more relevant to hydropower over the next 3 years. These and other opportunities also exist in adjacent regions for existing wind and biomass facilities, more notably in New England's Class I renewable programs. The value for these programs is similar to the ZEC value specified in the CES relative to the social cost of carbon, which further highlights the need for regional harmonization for all zero-emitting generation.

As noted by ACE NY, in 2014, only 24% of the total Massachusetts Renewable Portfolio Standard ("RPS") compliance obligation was met by in-state resources – which leaves ample opportunity for New York resources.²¹ ACE NY and ReEnergy also noted that a number of existing resources are gearing up to or are already exporting to other regions outside New York.²² Therefore, as IPPNY astutely remarked and as discussed above, the record does not support the Commission's statement that "there is no imminent risk" that existing resources will

²¹ ACE NY Petition at 5.

²² ACE NY Petition at 4; ReEnergy Petition at 8.

sell clean attributes into other states.²³ Instead, the current record only includes conclusory statements that existing renewable resources do not have ample opportunities for competition outside of New York. Moreover, the CES Order patently ignores that there is ample evidence in the record presented by multiple parties that warn of and explain the imminent risk of New York's clean energy assets selling into other states. Clean energy programs and competition for renewable resources already exist and are quickly evolving in the Northeast, on a more non-discriminatory basis, such that the risk New York faces of losing its precious resources is more imminent now more than it will be in three years when New York's existing renewable resources will likely have opted for more opportune commitments.

Therefore, unless reconsideration or rehearing is granted and the record expounded on this issue, the record will remain inadequate, and more importantly, if the issues are not ultimately addressed in the CES implementation to provide appropriate compensation for existing renewable resources, New York's existing renewables will continue to search for and find other opportunities to the detriment of the CES.

D. A Loss of Low-Cost Existing Renewables will Undermine the CES at Ratepayer Expense

IPPNY and RENEW observed that the cost to retain RECs and resources would reasonably be expected to be lower than the costs to enter into long term contracts to purchase RECs from new sources under Tier 1.²⁴ As a consequence, if Tier 2 resources are lost to either other markets or due to financial stressors, ratepayers will bear the burden as more RECs will be required from more expensive resources. Therefore, it is imperative that the Commission reconsider the inclusion of existing renewable resources in either the REC, or through some

²³ IPPNY Petition at 4, *citing* the CES Order at 116; *see also* ReEnergy Petition at 6-7.

²⁴ IPPNY Petition at 6; RENEW Petition at 3.

other form of compensation at a level appropriate to their overall value, either based on the social cost of carbon or competitive opportunities, as both approaches appear to converge around a similar benchmark.

E. The Maintenance Tier Will Not Advance the CES, and May Result in Unintended Adverse Consequences

The CES Order attempts to include existing renewable resources in the CES by imposition of a Maintenance Tier, which would only permit hydroelectric facilities of 5 MWs or less to apply for a maintenance contract if the facility can show it is financially stressed and would otherwise shutter without the contract. Many of the Petitions explain, and Brookfield Renewable agrees, that these maintenance contracts do little to advance the CES and 50 by 30 goal, and may do more harm than good.

Energy Ottawa observed that the Maintenance Tier offers only modest support to a very limited subset of existing renewable resources.²⁵ Brookfield Renewable supports the arguments that the 5 MW limitation will exclude a multitude of hydroelectric resources, but even more strongly feels that the Maintenance Tier program design, regardless of size restrictions, will essentially expose a number of facilities to risk of closure or force pursuit of alternative markets, with either scenario resulting in a decrease in the State's CES baseline.²⁶ Thus, the Maintenance Tier may result in heavier reliance on more expensive Tier 1 resources, with the increased costs borne by the ratepayers. And while the CES Order pledged further review of the Maintenance Tier at some point in the future, if warranted,²⁷ by that time it may be too late if existing renewables have found alternate markets or have suffered irreparable financial damage.

²⁵ Energy Ottawa Petition at 5.

²⁶ Energy Ottawa at 14.

²⁷ CES Order at 18.

In addition, the Maintenance Tier outlined in the CES Order and as recently proposed by NYSERDA and DPS Staff in the CES Implementation Plan²⁸ presents significant problems in addressing the lack of appropriate compensation for existing renewable resources. The administrative burden of the program, including the information requirements, suggest an enormous staffing requirement to assess the more than 150 hydroelectric facilities on a facility-by-facility basis both on the part of the DPS and the applicant. Furthermore, generators with a portfolio of assets, including Brookfield Renewable, generally would not be able to provide this information on a facility-by-facility basis but rather on a portfolio basis, which reverts back to basic rationale of supporting existing hydropower and renewable generation as an overall portfolio. The attempt to focus on a cost-of-service for these facilities suggests that the State may either pay a high amount for maintenance of individual smaller facilities (potentially greater than the ZEC value plus applicable market revenue), or too little (i.e. less than the ZEC value) which would result in the motivation by the generator to simply export the power out-of-state as described earlier. Overall, Brookfield Renewable believes the Maintenance Tier to be an unworkable construct for the purpose of recognizing the valuable non-emitting contribution of the State's independent hydropower generation.

F. The CES Inappropriately Discriminates Between Different Sources of Existing Zero-Emission Generation

Another central theme raised in a number of Petitions is that the ZEC portion of the CES Order unfairly discriminates between different sources of existing zero-emitting generation,²⁹

²⁸ Case 15-E-0302, Phase I Implementation Plan Proposal, 4-6 (Oct. 31, 2016).

²⁹ Energy Ottawa Petition at 6; Ampersand Hydro, LLC, Petition for Rehearing of Ampersand Hydro, LLC, 6-7 (Aug. 23, 2016) (“Ampersand Petition”); ReEnergy Petition at 3.

such that only a few select facilities and technologies would be chosen for compensation, and ultimately, to survive in New York.

Brookfield Renewable understands the State's policies and goals in providing ZEC payments to nuclear generation, and appreciates the urgency of the situation that has been described for nuclear facilities. However, as Energy Ottawa notes, the same factors that are eroding the economics of existing nuclear facilities have and will produce similar effects on existing resources, such as hydropower.³⁰ This effect will be even more pronounced if existing resources are not allowed to meaningfully participate in the CES. Furthermore, Ampersand Hydro noted that while the CES Order acknowledged the at-risk position of other zero-emission facilities, such as small hydro, there was no reasoned explanation to not extend ZECs to all zero-emitting sources.³¹ Therefore, to mitigate potential losses of existing resources that will be critical to meet the 50 by 30 goal and maintain low prices for ratepayers, Brookfield Renewable agrees with Petitioners that suggest the Commission should grant reconsideration or rehearing to evaluate giving all existing zero-emission generation the same form, manner, and level of compensation.³²

Besides preserving existing resources and providing a level playing field, valuing all existing zero-emitting generation in the same way would mitigate challenges that claim the ZEC portion of the CES Order violates the Commerce Clause of the U.S. Constitution. Certain legal challenges have asserted that a state action is invalid and burdens interstate commerce if it does not regulate in an evenhanded manner. However, if the Commission were to reconsider

³⁰ Energy Ottawa Petition at 6.

³¹ Ampersand Hydro Petition at 6.

³² Energy Ottawa Petition at 7; *see also* Ampersand Petition at 7.

eligibility for the ZEC program or grant rehearing to evaluate if all zero-emission resources were compensated and valued the same, any such constitutional argument loses force.

IV. CONCLUSION

Brookfield Renewable's contribution to and participation in the CES proceeding demonstrates its commitment to help create a successful, cost-efficient, and sustainable clean energy program in New York. The Commission, Staff, stakeholders, industry groups, associations, and the renewable generators are to be highly commended for the work in this proceeding as well as other related proceedings to bring New York closer to its 50 by 30 goal. However, without reconsideration or limited rehearing on particular issues of the CES Order to strengthen and develop a more thorough record, the CES is at risk of substantial delay and prone to legal challenges. Brookfield Renewable believes that reconsideration or limited rehearing is warranted in light of the forgoing, and that additional review now will create a more defensible, cost-efficient, and robust Clean Energy Standard for both the near and long term.

Dated: November 14, 2016

S/

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