STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard	Case 15-E-0302
In the Matter of the Value of Distributed Energy Resources	Case 15-E-0751

BROOKFIELD RENEWABLE COMMENTS ON PETITION REGARDING MODIFICATION OF THE CLEAN ENERGY STANDARD TO TRANSITION FROM A DEFINED PERCENTAGE OBLIGATION TO A LOAD SHARE OBLIGATION

Brookfield Renewable submits the following comments in response to the "Petition Regarding Modification of the Clean Energy Standard to Transition From a Defined Percentage Obligation to a Load Share Obligation" ("Transition Petition") filed with the New York State Public Service Commission ("Commission") by the New York State Energy Research and Development Authority ("NYSERDA") on November 9, 2022. As a company composed of entities that separately produce and procure Tier 1 renewable energy credits ("RECS"), Brookfield Renewable has a direct interest in the outcome of this matter.

As described in further detail below, the changes proposed in the Transition Petition relating to the Clean Energy Standard ("CES") 1) will likely cause hedging problems for load serving entities ("LSE") due to the unknown price and quantity of RECs they will be obligated to purchase after NYSERDA goes through its own REC acquisition and voluntary sales process, and 2) go too far in potentially extending NYSERDA's participation in the voluntary sale and resale REC market. However, should the above changes be approved, the proposal regarding NYSERDA purchasing and re-allocating Tier 1 RECs under Value of Distributed Energy Resources ("VDER") also should be adopted as part of the order granting this petition. Furthermore, such approval should carry through to the treatment of RECs procured from baseline VDER resources as this aspect of the Transition Petition dovetails with a petition[1] filed by Interested Hydroelectric Parties seeking Environmental "E" Value ("E Value Petition") compensation eligibility for pre-2015 eligible technologies.

BROOKFIELD RENEWABLE'S INTEREST IN THE CASE

Headquartered in New York, NY, Brookfield Renewable's U.S. platform owns and operates solar, wind, storage, and hydroelectric facilities across 34 states. The U.S. platform consists of

[1] Case 15-E-0751. *Petition of Interested Hydroelectric Parties Eligibility For Environmental Value Compensation For Pre-2015 Resources Under the Value of Distributed Energy Resources Tariff.* Filed May 26, 2022.

200 utility-scale renewable energy facilities and 4,822 distributed solar projects, totaling over 8,200 MW in nameplate capacity.

Brookfield Renewable has a significant presence in New York, including 74 hydroelectric facilities on 15 river systems, 711 MW of installed capacity, plus three recently integrated Terraform Power wind projects totaling 160 MW, supporting over 300 employees in New York.

Additionally, through its subsidiary Brookfield Renewable Energy Marketing US LLC, Brookfield Renewable serves as a load serving entity within New York State and, therefore, incurs a Tier 1 CES compliance obligation, which is the primary focus of the Transition Petition.

COMMENTS ON THE TRANSITION PETITION

A. BACKGROUND

As described in the Transition Petition, under the current approach, an LSE's Tier 1 obligation under the CES is represented as a pre-determined and ascending percentage of the load it serves. Tier 1 RECs may be procured from NYSERDA (who acquires such RECs from suppliers via contracts awarded pursuant to annual requests for proposals to solicit Tier 1 RECs from eligible suppliers) or other sources, or, in the alternative, by making Alternative Compliance Payments ("ACP"). Deviating from the historical approach, the Transition Petition seeks approval for a new method, where "LSEs would simply be obligated to procure all Tier 1 RECs made available by NYSERDA, after the completion of voluntary sales, in a proportion equivalent to their share of the State load or load share."[2]

NYSERDA notes that CES program assessments have shown that while there is a persistent undersupply of Tier 1 RECs, the ACP as instituted in New York State has not provided an incentive for LSEs to pursue direct REC procurements and, instead, has become a tool that LSEs rely upon to meet Tier 1 compliance obligations. Despite multiple downward adjustments to the LSE obligation percentage, the undersupply of Tier 1 RECs persists as does LSE reliance on the ACP.

The proposed change to determine LSE purchase obligations of Tier 1 RECs to its load-weighted share of those RECs actually procured and held by NYSERDA is an attempt to match LSE (and ratepayer) financial obligations to the actual production of NYSERDA-contracted renewable energy. According to the Transition Petition, the proposal has the co-benefit of facilitating NYSERDA's ability to pre-sell and resell the procured Tier 1 RECs to the voluntary market prior to the determination of LSE obligations, something that is not compatible with the current construct where an LSE's obligation is a fixed percentage of its load and Tier 1 RECs are already in undersupply.

The Transition Petition also notes two natural outcomes of the proposed changes. First, the ACP will no longer be necessary, as LSE compliance will be through the direct purchase of their

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[2] *Transition Petition* at 1.

share of NYSERDA's actual Tier 1 REC inventory (i.e. there will be no REC shortfall). Additionally, because VDER Tier 1 RECs are purchased by investor-owned utilities ("IOUs"), those RECs are currently used to help meet the IOU's CES Tier 1 obligations. However, because the proposed changes set each LSE's obligation such that, in total, all of NYSERDA's procured Tier 1 RECs will be sold, this creates a mismatch. Therefore, the resulting second outcome of the Transition Petition is for NYSERDA to buy from LSEs all of their VDER Tier 1 RECs and fold them into the pool of CES Tier 1 RECs to determine the total Tier 1 REC obligation for all LSEs. NYSERDA includes this request in the Transition Petition as well.

B. NYSERDA's Proposed "New Approach: Load Share Obligation" will harm energy service companies' ability to properly manage price risk associated with an unknowable Tier 1 obligation

Although there has been consistent mismatch between the Tier 1 target obligation percentage and the amount of Tier 1 RECs procured by NYSERDA to help LSEs meet that obligation, knowing the percentage obligation heading into a given compliance year provides LSEs, particularly energy service companies ("ESCO"), an opportunity to know their cost exposure and hedge appropriately. An LSE can forecast its anticipated load and, by knowing both the ACP and its Tier 1 target percentage obligation for the compliance year, can put in place a pricing structure that reflects its anticipated costs.

The Transition Petition adequately captures this scenario:

> The cost of an ACP is published prior to the start of each compliance year and provides an upper bound enabling an LSE to determine its cost of Tier 1 compliance. In this way, ACPs are not only an alternative compliance method, but also act as a means of cost certainty and provide a cost cap for Tier 1 compliance because LSEs do not need to incur costs higher than the ACP. [3]

A shift away from this structure leaves LSEs, particularly ESCOs seeking to offer a competitively priced fixed product, without the ability to forecast with any amount of reasonable certainty what their annual CES cost obligation will be in any given year. That situation arises because instead of a known ACP as an upper bound on price, NYSERDA will attempt to predict at the beginning of each year the cost component of the LSE Tier 1 REC Rate. As explained further in the Transition Petition:

> The cost component of the LSE Tier 1 REC Rate would be the cost for NYSERDA to procure Tier 1 RECs from the Large-Scale Renewable RFPs, plus the cost of VDER Tier 1 RECs, plus any Commission-approved administrative adder less any sales made through the voluntary sale process. It should be noted that NYSERDA LSR Tier 1 RECs can vary in both quantity and price, ***which introduces a degree***

[3] Id. at 4.

> ***of uncertainty… NYSERDA recognizes that with the implementation of index-priced RECs, there could be a variation between the forecasted Tier 1 REC price and the actual price NYSERDA pays for Tier 1 RECs.*** **[**emphasis added].[4]

From an ESCO standpoint, the load ratio share is less administratively cumbersome given the available Tier 1 supply is very low. As the volume of the Tier 1 supply increases, the problem will become more evident. Due to Tier 1 RECs being predominantly indexed and because of wholesale price volatility, the swings in the estimated Tier 1 REC rate for LSEs versus the actualized price can be large, and the impact of that delta is likely to grow as the size of the LSE obligation grows.

It is unclear how the over/under collection will make its way back to customers. In most instances, it seems likely that ESCOs will try and pass-through CES charges as opposed to taking a significant risk on predicting what the supply obligations are likely to be. This scenario is likely to increase costs to consumers that are seeking an all-in fixed price to protect themselves against market volatility, and the problem will worsen over time as the volume of renewables increases. Unfortunately, Brookfield Renewable sees this as an inevitable outcome of the proposed changes and does not have a recommendation to avoid its occurrence. The only question is how big of a spread there will be between the price at the beginning of the year and the one utilized for reconciliation at year-end once NYSERDA has accounted for its purchases and sales and the price associated with each. The only protection against this happening (or to limit its severity) is for NYSERDA and the Department of Public Service to be as accurate as possible with the beginning of the year forecasting, which is no easy task considering the array of variables associated with renewable energy production and indexed RECs tied to unknown market fluctuations.

C. Implementation of Tier 1 REC Voluntary Sales

NYSERDA requests the ability to sell Tier 1 RECs to voluntary purchasers, siting a "growing market interest in REC purchases and to minimize costs for New York ratepayers[5]" as compelling reasons to do so. Brookfield Renewable finds aspects of this proposal problematic and requests that the Commission consider modifications as described below.

The State has failed to design any viable mechanisms to support its existing renewable energy baseline. Existing baseline (pre-2015) renewable resources are currently ineligible for CES Tier 1 and Tier 4, they cannot receive the E value under VDER (the aforementioned E Value Petition is seeking to remedy this fact), and the competitive Tier 2 program resulted in the procurement of just 13.9 MW of renewable baseline resources through three solicitations.

This lack of programmatic support has led existing renewables to seek value for their attributes in other areas. Unfortunately, a large amount of RECs are being exported to neighboring regions in support of their clean energy goals. Otherwise, support must come from

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[4] Id. At 17.

[5] Id. At 11.

the voluntary REC market. NYSERDA correctly identifies CCAs and entities seeking to meet Environmental, Social and Governance goals as driving some level of demand in the voluntary market, and Brookfield Renewable works hard to explore these opportunities.

However, through this Transition Petition, the State is sending the message to its renewable energy baseline resources that not only is there no CES or other program to ensure the viability of the State's existing renewable resources, but it also now intends to enter as a participant in the voluntary REC market as a direct competitor to those resources. Such an entrance will undoubtedly be disruptive and will likely diminish the already limited opportunities baseline renewable resources have to find viable counterparties for REC transaction.

At a minimum, the Commission should limit NYSERDA to just the resale component of the Transition Petition and not the requested presale or the long-term contracting proposals. It has not been NYSERDA's purview to negotiate specialized contracts with voluntary buyers. If, in being allowed to do so, NYSERDA underestimates the price of the Tier 1 RECs for a given year, that undervalued price will carry through that year as an arbitrarily low ceiling for other entities looking to sell their Tier 1 RECs in the voluntary marketplace. It is an intrusion that is unnecessary, especially if NYSERDA is granted the opportunity to resell already procured Tier 1 RECs at year-end once actual prices and volumes are known.

Additionally, there are entities that have eligible Tier 1 RECs but do not have a contract to sell those to NYSERDA through the CES. As noted above, whether it be within the presale or resale paradigm, NYSERDA's sale of Tier 1 RECs serves as a price ceiling above which it makes little sense for voluntary buyers to purchase Tier 1 RECs. Therefore, if NYSERDA is taking steps to cap the value of non-contracted Tier 1 eligible RECs, then the producers of such uncontracted Tier 1 RECs should have the opportunity to sell those RECs to NYSERDA in this new marketplace of voluntary sales and purchases. This could be achieved by NYSERDA having a standing bid at its resale price for any resources that meet the Tier 1 requirements. Through this, not only will Tier 1 REC holders have an outlet for those RECs that has otherwise been cut off by NYSERDA's entrance into the voluntary REC market, but it may also drive generators to seek out upgrade opportunities to achieve Tier 1 eligibility without having to go through the Tier 1 RFP process.

D. Treatment of VDER Tier 1 RECs

Should the Commission decide to adopt the load-share obligation changes within the Transition Petition, then it should also approve the corresponding proposal to modify the treatment of VDER Tier 1 RECs. As described in the petition, although these VDER Tier 1 RECs are initially purchased by the IOU within whose footprint the DER resource resides and can be used to help meet the IOU's CES Tier 1 obligations, the change in LSE CES Tier 1 REC obligation calculations necessitates a change in the allocation of VDER Tier 1 RECs as well.

NYSERDA appropriately proposes to purchase the VDER Tier 1 RECs from the IOUs and add them to the CES Tier 1 RECs purchased by NYSERDA to determine the total Tier 1 REC obligation for all LSEs. NYSERDA explains that "This approach would allow the IOUs to receive credit for their required purchase of VDER Tier 1 RECs and for the cost of VDER Tier 1 RECs to be shared amongst all jurisdictional ratepayers as the environmental attributes these RECs represent are a shared societal benefit."[6] This proposal is straightforward and consistent with the other changes proposed in the Transition Petition.

Additionally, the recognition that these environmental attributes represent a shared societal benefit is consistent with the reasoning utilized by the Interested Hydroelectric Parties in their E Value Petition. Without recounting all of the reasons laid out in that petition as to why pre-2015 DER resources should be eligible for the E value of the VDER value stack, it is important to point out that the Transition Petition's proposal for VDER Tier 1 RECs is easily applicable to pre-2015 DER resources as well. In the E Value Petition, parties proposed that older vintage RECs could be utilized by the IOU to offset either Tier 1 or Tier 2 compliance obligations. Instead, the RECs associated with pre-2015 could receive the same proposed treatment of Tier 1 VDER RECs, i.e. that they get purchased by NYSERDA and added to the Total Tier 1 REC obligation for all LSEs. This change would reflect the fact that these resources are contributing to the State's CES goals and that represents a shared societal benefit.

CONCLUSION

Brookfield Renewable appreciates the opportunity to comment on these important matters and hopes the Commission makes a decision that balances the best interests of all parties seeking to achieve New York's clean energy goals. NYSERDA plays a critical role in that success, but other entities, such as participants in the voluntary REC market, also play a critical role in the preservation of New York's renewable energy baseline and should be accounted for when balancing program changes.

Respectfully submitted,

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[6] *Transition Petition* at 9.