

A large, abstract blue geometric shape, resembling a stylized letter 'A' or a series of overlapping parallelograms, is located in the upper right quadrant of the page.

September 23, 2024

VIA ELECTRONIC FILING

secretary@dps.ny.gov

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 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.

Dear Secretary Phillips:

Borex respectfully submits these comments regarding the Draft Clean Energy Standard Biennial Review (Biennial Review) filed by Department of Public Service (DPS) Staff and the New York State Energy Research and Development Authority (NYSERDA) on July 1, 2024.

We appreciate the opportunity to provide our insights and recommendations on this important matter. If you have any questions or require further information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Suarez", is located below the word "Sincerely".

Darren Suarez

Vice President Public Affairs and Communications, North America
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STATE OF NEW YORK PUBLIC SERVICE COMMISSION

Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard Draft Biannual Program Review Comments

Executive Summary

Boralex is an independent power producer that develops, builds, and operates renewable energy generation and energy storage facilities. For over two decades Boralex has operated hydro facilities in New York and for over five years Boralex has been developing a portfolio of solar projects. Boralex provides the following comments:

- **70 x 30** - The 70x30 mandate is attainable through strategic program adjustments, such as modifying the Index REC structure, expediting procurement processes, enhancing transparency, and minimizing interconnection delays. While New York doesn't need radical solutions, consistent and practical efforts to refine the program will be crucial to achieving the State's objectives.
- **Proxy Revenue Structure** - shift from the current Index or Fixed REC methodology to a Proxy Revenue Structure based on nodal pricing and resource curves for wind and solar projects would further mitigate risks and lower costs by providing developers with more precise revenue projections. By assuming responsibility for modeling and managing nodal price risks, the State can ensure more efficient risk management, prevent unnecessary risk premiums from being factored into bids, and ultimately lead to lower consumer costs and smoother project execution.
- **E-Value for Hydro** - extended eligibility for Environmental Value (E-Value) compensation under the Value of Distributed Energy Resources (VDER) tariff to pre-2015 hydroelectric resources. At the bare minimum hydroelectric resources that participate in the Commission's Community Distributed Generation program (CDG) should be explicitly allowed to generate and transfer Renewable Energy Certificates (RECs) if they do not receive E-Value compensation.

Introduction

Boralex welcomes the opportunity to submit comments regarding the Draft Biannual Program Review (the Review) of the Clean Energy Standard. Boralex has been providing renewable energy for over 30 years. A leader in the Canadian market and France's largest independent producer of onshore wind power, the company also has facilities in the United States and development projects in the United Kingdom.

In New York State, Boralex operates six hydroelectric facilities totaling 78 MW of capacity and employing 29 New Yorkers across the state. An additional two dozen employees live and work throughout the United States and report out of the company's South Glens Falls office: with plans for significant growth over the coming decade and beyond.

Over the past five years, the company's installed capacity has more than doubled to 3 GW. Boralex is developing a worldwide portfolio of over 6 GW in wind, solar and storage projects, guided by Boralex's values and the company's Environment, Social and Governance (ESG) approach. Boralex has been actively investing in New York State since the passage of the Climate Act and now has nearly 200 solar lease agreements with New York families who will see direct financial benefit when the company's projects begin operation.

70 X 30

As stated in the Climate Action Council Final Scoping Plan "The Climate Act requires that 70% of statewide electricity come from renewable energy sources by 2030 (70x30)." Specifically, section § 66-p of the Public Service Law, establishes the criteria for the development of the renewable energy program.

*The commission shall establish a program to **require** that: (a) a minimum of seventy percent of the statewide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty shall be generated by renewable energy systems. (PSL § 66-P (2) **bold added for emphasis**)*

The law establishes that the Commission may temporarily suspend or modify the program if it finds, through a hearing, that it impairs electric service, existing obligations, or causes significant financial hardship such as increased arrears or disconnections.

The Commission makes a finding that the program impedes the provision of safe and adequate electric service; the program is likely to impair existing obligations and agreements; and/or that there is a significant increase in arrears or service disconnections that the commission determines is related to the program (PSL § 66-P (4)).

The law grants the Commission the power to temporarily suspend or modify the program, but only after a hearing and a specific finding. However, the criteria for such a finding raises concerns about the State's ability to meet the legal standard. First, the requirement that the program "impedes the provision of safe and adequate electric service" appears to be a very high standard, especially since the concept of "just and reasonable rates" - typically considered alongside "safe and adequate service" - is absent. Second, it's unclear which existing obligations this program could realistically impair. Finally, the clause mentions "a significant increase in arrears or service disconnections related to the program" as a justification for modification, but this is written in the present tense, which was a point of contention during the CLCPA negotiations. There is currently no evidence that the Clean Energy Standard (CES) has led to measurable increase in the cost of electricity. Overall, meeting any of these conditions to modify the program seems unlikely. Instead, the State should remain committed to the 2030 mandate by aggressively procuring new renewables over the next two to three years.

Practical Efforts

New York State has made limited progress in the deployment of renewable energy. While contributing factors have included a combination of unexpected, and unpredicted upheaval in financial markets, global supply chain, and labor availability in the aftermath of the COVID-19 pandemic, the same impacts have been felt across the globe, and many other jurisdictions have been able to maintain and expand robust deployment of renewables.

Improve the Index REC

As described in more detail below, we advocate for a shift from the current Index or Fixed REC methodology to a Proxy Revenue Structure based on nodal pricing and resource curves for wind and solar projects. This approach would accurately calculate project revenue based on location and production profile, ensuring that projects are compensated according to their true market value. By utilizing real-time nodal pricing, NYSERDA can enable developers to better manage revenue risks, ultimately reducing bid prices and benefiting ratepayers. Employing historically accurate resource curves would further mitigate risks and lower costs by providing developers with more precise revenue projections.

Transitioning to a Proxy Revenue Structure would allow the State to effectively manage grid congestion and future transmission investments through various mechanism, including the Public Policy Transmission Needs (PPTNs) process, reducing overall project risk for developers. This structure also mitigates legal concerns raised in *Hughes v. Talen* regarding state intervention in energy markets. By assuming responsibility for modeling and managing nodal price risks, the State can ensure more efficient risk management, prevent unnecessary risk premiums from being factored into bids, and ultimately lead to lower consumer costs and smoother project execution.

NYISO Funding and Resourcing

The State must acknowledge the role that process delays and unexpected (not to mention unreasonable) interconnection cost increases at both the NYISO and the individual investor-owned utilities has played in the lack of aggressive renewable deployment. While both the NYISO and the utilities have made attempts to improve processes, the numbers in the Review show that New York is woefully behind. It is essential that NYISO has adequate staffing and resources to expedite interconnection studies and prevent delays in renewable energy deployment. Additionally, that the investor owned utilities are provided the right incentives to ensure timely, and cost conscious interconnection requirements. The Commission should continue to advocate for the adoption of Grid Enhancing Technologies

Resource Adequacy

We encourage the state to reexamine the ongoing Resource Adequacy Proceeding (Case 19-E-0530) and transition to a more efficient Resource Adequacy (RA) framework. This would provide clearer long-term price signals, supporting non-emitting resources and aligning with the state's clean energy goals.

EPC Costs

Developers understand and agree with the Commission and NYSERDA's emphasis on limiting ratepayer impacts. However, a realistic understanding of the cost of developing in New York State, especially when compared with other jurisdictions, is necessary. To that end, the State should conduct a study on EPC costs in New York State relative to other jurisdictions. This analysis should include potential fixes which would lower developer costs thereby leading to fewer ratepayer impacts

Increasing Transparency

We believe that the Tier-1 REC procurement process could be greatly improved by increasing transparency. This includes timely posting of contracts and awards and keeping thresholds, processes and programs more consistent through each RFP. The company also believes it is in the best interest of the State and individual developers to keep to the expected RESRFP24-1 timeline of announcing awards within 60 days of bids being due.

Nuclear Challenge

The State's seeming embrace of nuclear technology is concerning due to the long lead times and absence of nuclear projects in the NYISO queue. Instead, the state should focus on deploying solar, wind, and battery storage projects, which can be executed more quickly and at a lower cost to ratepayers.

Conclusion

Boralex again thanks the State for releasing this report and offering substantive options for industry and other stakeholders to consider. As described throughout the response, Boralex agrees with the State's focus on minimizing ratepayer impacts. As the company's response states, Boralex believes the best way to achieve that outcome is by making minor changes to the structure of the program to remove risk. The company believes the easiest and most efficient ways to achieve that outcome are by moving to a true CfD and/or NYSERDA taking on more basis and scalar risk, extending the contract tenor to 25 years and allowing baseline hydro resources to either receive the E-value or be allowed to directly sell their RECs in the open market.

New York has justifiably called itself the Empire State due to its decades of leadership in manufacturing and innovation. Let's work together to ensure that spirit of leadership, entrepreneurship and environmental stewardship continues for decades to come.

Boralex's Opinion on Options Presented in the Review

Boralex commends DPS and NYSERDA for acknowledging that program changes are needed and providing substantive options for stakeholders to comment. What follows are the company's thoughts on some of the specific options outlined in the Review.

Project Selection

While Boralex acknowledges that ACE New York and other developers may feel differently, reworking the project selection scoring percentages is not a prudent solution to the challenges facing the program. However, if future procurements return to the minimum threshold standards that existed prior to RESRFP23-1, the 20 percent non-price points should put a greater emphasis on project viability. So that project maturity and local acceptance are given greater weight. Additionally, onshore wind-specific solicitation(s) or carve-outs are unnecessary as the reduction in onshore wind projects is due to the fact that New York does not have the best topography for wind and most of the best sites have already been taken.

Strike Price Adjustment

A properly constructed strike price adjustment to awarded but not yet constructed projects if unforeseen events outside the control of project developers occur is a prudent choice and is something the Commission should consider. However, the company strongly believes an adjustment formula must be more sophisticated than simply CPI or PPI. A formula more consistent with the one proposed by industry in the petition submitted by ACE New York in July of 2023 would be beneficial.

We do not believe the alternative option of adjusting awarded strike prices based on a market price index is a prudent option, especially when compared to the formulaic adjustment offered above.

REC Purchase Contract Tenor

We fully supports the idea of extending the contract tenor to 25 years. Boralex, and other companies, plan their projects on 30-year horizons. Expanding the contract tenor beyond 20 years would reduce risk in the outyears, thereby leading to lower bids, easier financing and less impact on ratepayers.

COMD Deadlines and Extensions

Boralex does not believe this is a viable option as this would lead to more speculative projects being bid, which is not an outcome that the State is seeking.

Index REC Methodology

NYSERDA should move away from the current Index or Fixed REC methodology and instead move toward a “Proxy Revenue Structure” based on nodal pricing and resource curves for wind and solar. This method would calculate the expected revenue a project should generate based on its location on the grid (nodal price) and its production profile (resource curves). Nodal pricing ensures that the project revenues reflect the true local market value of electricity at a specific location on the grid by accurately considering the impact of congestion and loss factors. If NYSERDA were to use real-time nodal pricing it would allow developers to better manage and understand revenue risks, thereby reducing bid prices and overall ratepayer impacts. Employing the use of historically accurate resource curves would similar reduce risk and therefore ratepayer impacts by giving developers the tools needed to more accurately predict their project their revenue streams based on realistic, localized data. By allowing developers to manage nodal and congestion risks through state-supported models rather than pricing them into their bids, developers would not have to account for unpredictable future risks as heavily, which should result in more competitive project costs and lower bid prices. This structure would also give clearer long-term price signals to developers, aligning their revenue expectations with actual grid conditions. This will allow the State to better manage grid congestion and future transmission investments through Public Policy Transmission Needs (PPTNs), reducing the overall risk profile for developers.

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This structure would avoid potential legal complications related to *Hughes v. Talen*, which raised concerns about state intervention in energy markets by providing direct financial support to specific resources. A proxy revenue structure ensures that payments are based on market revenues, reducing the risk of market distortions or legal challenges.

Under this system, NYSERDA or the State would be responsible for modeling and managing nodal price risks, which is a more efficient approach than leaving it to individual developers. The State has a better capacity to understand grid developments and congestion trends, allowing for strategic interventions (e.g., declaring PPTNs) to minimize these risks.

The State's ability to manage risk would ensure that unnecessary risk premiums are not priced into bids, leading to better pricing for consumers and smoother project execution for developers.

Designate Renewable Energy Zones

We do not believe this is necessary as modifying the index REC structure as discussed earlier in this document would serve largely the same purpose. The State also already has the power to declare PPTNs, which it should do, particularly in the upstate areas identified by the NYISO.

Baseline Hydro Generation

As a leading owner and operator of hydroelectric resources in New York, Boralex fully supports extended eligibility for Environmental Value (E-Value) compensation under the Value of Distributed Energy Resources (VDER) tariff to pre-2015 hydroelectric resources. At the bare minimum hydroelectric resources that participate in the Commission's Community Distributed Generation program (CDG) should be explicitly allowed to generate and transfer Renewable Energy Certificates (RECs) if they do not receive E-Value compensation.

Boralex operates the Sissonville Hydro Facility, located near Potsdam, New York, has a generating capacity of 2 MW and has been operational since its construction in the early 1986. Sissonville, located on the Raquette River and 1.5 miles downstream from the Potsdam municipal hydro facility, was originally developed in the 1890s to grind pulp for the Raquette River Paper Company. Through our partnership with Northern Power and Light (NP&L), Sissonville participates in New York's CDG program, allowing approximately 200 homes and small businesses to benefit from local energy. The facility plays a significant role in the community by promoting sustainability and energy independence.

Recently, Boralex's Sissonville Generating Facility, was informed that the facility would no longer be receiving transferable RECs, because it has been interpreted that transferability was inconsistent with the Commission's Value of Distributed Energy Resources (VDER) Order. Specifically, Sissonville was informed that CDG hydro facilities should be registered under the Customer-Retention-Option, where they generate nontransferable RECs and are not eligible to receive E-Value compensation. Non-transferable RECs have limited value.

Since 2021, the Sissonville facility using the NYGATS system transferred the RECs, and made financial decisions predicated on the ability to transfer the RECs. Specifically, after our experience with the Sissonville site, we made investments to enroll another facility in the CDG program.

The 2015 VDER Order contained certain ambiguities, especially regarding the classification and treatment of CDG hydro resources. The definition of Customer at times references a utility customer and customer sited generation

resources. The Order itself addresses numerous unrelated matters, and was not focused on this specific matter. Furthermore, it remains unclear why the Order would, or the Commission would want to limit the value of hydro CDG RECs. These mixed signals led Boralex to believe that our operational decisions were in alignment with the Order's intent.

Our reasoning was also bolstered by our understanding of the intentions of Chapter 436 of the Laws of 2012, which states that the certificates "shall exist as a commodity separate and apart" from the associated energy and that the intention of NYGATS was to create tradable generation attribute certificates. We understand and appreciate that part of the intention was to ensure transparency and traceability, so our contracts have explicit provisions stating "Subscriber may not make any claims to the consumption of renewable energy for marketing, or any other purpose based on this Agreement, unless the Subscriber receives Renewable Energy Certificates from the Provider in addition to Bill Credits" to avoid double counting of the attributes.

Now is the time for the Commission to extend eligibility for E-Value compensation under the VDER tariff to pre-2015 hydroelectric resources. These legacy facilities have historically played a critical role in contributing to New York's renewable energy portfolio, yet they are currently excluded from receiving the compensation their environmental contributions merit. Expanding eligibility to these pre-2015 hydro resources would align with the Climate Leadership and Community Protection Act's (CLCPA) mandate to drive 70% renewable energy consumption by 2030 and achieve a zero-emission grid by 2040. It is imperative that the Public Service Commission correct this exclusion, as continued operation of these resources is crucial to meeting the State's ambitious clean energy goals.

The economic viability of many hydroelectric resources has become increasingly precarious due to declining market revenues, resulting in reduced production and increased exportation of renewable energy outside New York. Exports of non-New York Power Authority hydro increased by over 640,000 MWh in 2021 alone, further straining New York's clean energy targets. The CLCPA has heightened the State's focus on renewable energy, but pre-2015 hydro resources—despite being renewable and integral to the system—remain ineligible for E-Value compensation.

Boralex believes that the proliferation of distributed solar projects under the VDER program provides a strong precedent for expanding compensation to hydroelectric resources. These hydro facilities, particularly in regions such as the Adirondacks where solar development is less feasible, offer essential benefits, including grid resilience and day-and-night baseload power. Moreover, these resources are deeply integrated into the communities where they operate,

contributing to local economies and providing flood control and public water access. Including pre-2015 hydro resources in the VDER E-Value structure would ensure their continued operation, support local economies, and avoid the need for additional state funding allocations or increased ratepayer costs.

In conclusion, Boralex respectfully urges the New York Public Service Commission to approve the petition for E-Value compensation to pre-2015 hydroelectric resources. Doing so would not only safeguard these critical assets but would also align VDER with the State's policy objectives under the CLCPA. Empowering local communities to support their renewable energy infrastructure, particularly through hydroelectric resources, will play a vital role in ensuring a sustainable, reliable, and equitable energy future for all New Yorker.