

**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**

**In the Matter of Carbon Pricing in New York Wholesale Markets**

**Matter 17-01821**

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**COMMENTS OF NRDC, ENVIRONMENTAL ADVOCATES OF NEW YORK, SIERRA  
CLUB, AND PACE ENERGY AND CLIMATE CENTER IN SUPPORT OF AMERICAN  
WIND ENERGY ASSOCIATION AND ALLIANCE FOR CLEAN ENERGY NEW  
YORK'S PETITION FOR AN ORDER MODIFYING THE TIER 1 PROCUREMENT  
PROCESS**

NRDC, Environmental Advocates of New York, Sierra Club, and Pace Energy and Climate Center submit these comments in support of American Wind Energy Association and Alliance for Clean Energy New York's March 13, 2019 petition to the Commission for an order modifying the Tier 1 REC procurement process to allow for the use of an Index REC process beginning in 2019. Doing so will reduce the costs per megawatt-hour of installing new clean energy and accelerate progress in achieving Governor Cuomo's ambitious goals of 70 percent renewable energy by 2030 and 100 percent emissions-free energy by 2040.

By modifying the Tier 1 REC program beginning in 2019 under which REC prices net against a composite index of NYISO prices (Index REC) in a manner similar to what the Commission recently authorized for offshore wind renewable energy credits (ORECs),<sup>1</sup> the Commission would reduce costs for customers while protecting them against price volatility

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<sup>1</sup> See Case 18-E-0071, *Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement* (July 12, 2018) (hereinafter "Offshore Wind Order"). The Commission defined the "Index OREC" as "Adjustable OREC prices that net periodically against a reference price expressed in a market index." *Id.* at 34.

caused by swings in natural gas prices. Taking this step would also obviate a concern raised by the Independent Power Producers of New York (IPPNY) and Multiple Intervenors (MI) that a “carbon adder” in the NYISO market amounts to a “double payment”.

**I. Index RECs Would Provide Substantial Benefits to Customers in the Form of Lower Costs and Less Volatility**

By providing a hedge against market volatility – and the regulatory uncertainty surrounding the carbon price initiative itself – the Index REC would lower the financing costs for renewable generators and therefore result in lower and less volatile prices for customers. Under the current fixed price REC structure, banks and other entities that provide financing to renewable developers perceive a repayment risk arising from the inherent unpredictability of wholesale energy and capacity market prices, which leads financial institutions to insist upon greater returns to their debt and equity, driving up project revenue requirements. Although hedging agreements can partially mitigate this risk, the market risk inherent in the fixed price REC structure is priced into developers’ REC bids, leading to higher costs for New York customers.

The Index REC structure provides a hedge against market volatility and therefore can lower the cost of capital, resulting in savings for customers. For this reason, the Commission’s Offshore Wind Order required bidders to include an Index OREC bid. This decision drew upon NYSERDA’s Offshore Wind Policy Options Paper,<sup>2</sup> which compared the cost profiles of several alternative procurement mechanisms. The estimated cost savings of using an Index OREC compared to a fixed price OREC were significant: NYSERDA estimated an incremental program

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<sup>2</sup> Case 18-E-0071, NYSERDA, Offshore Wind Policy Options Paper (Jan. 29, 2018).

cost of \$1.2 billion for a fixed OREC, compared to \$0.3 billion for the Index OREC – a savings of more than 75 percent.<sup>3</sup>

The same logic holds true for onshore projects. In 2015 NYSERDA published *Large-Scale Renewable Energy Development in New York: Options and Assessment* (LSR Options Paper).<sup>4</sup> The LSR Options Paper explained why fixed-price RECs are more expensive, concluding that such RECs do not offer any energy revenue certainty to investors, which are the largest part of the market value for these projects. Because of this, these contracts are not as effective at lowering the cost of capital for projects as other contract structures, which can do more per dollar spent to create a robust market for developing and building renewable energy facilities at scale. The amount of market price risk assumed by the developer even with a 20-year fixed price REC contract likely results in bidders adding a substantial risk premium to their bids.<sup>5</sup>

The LSR Options Paper analyzed the cost savings that would come from lowering the risk premium in REC bids, concluding that, without the Production Tax Credit, a wind project receiving fixed price RECs would need, on a levelized cost of electricity basis, a premium over market prices of \$32.78/MWh, compared to a fully hedged project, which would require a premium of \$21.42/MWh.<sup>6</sup> This represents a 35 percent decrease in the amount of public funds required to realize the project, resulting in substantial savings to customers.

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<sup>3</sup> The estimated incremental bill impact of the Index OREC was 0.18% compared to 0.76% for the fixed REC – a savings of 76.3%. *Id.* at 37.

<sup>4</sup> NYSERDA, *Large-Scale Renewable Energy Development in New York: Options and Assessment*, Final Report (June 2015), Report Number 15-12.

<sup>5</sup> *Id.* at 12.

<sup>6</sup> These figures come from NYSERDA's analysis of a renewable project with a utility-backed power purchase agreement. Elsewhere in the LSR Options Paper NYSERDA observed that the utility-backed PPA was equivalent, from a financial risk perspective, to a project that receives a contract for differences. *Id.* at 20. Although an Index REC is not a contract for differences or a PPA, it contains similar market hedge properties thus NYSERDA's estimate in the LSR Options paper is relevant to the potential cost savings that could be realized by an Index REC procurement mechanism.

An Index REC structure would also have risk mitigation benefits with respect to NYISO's carbon price initiative. This is because, when renewable developers submit bids for the 2019 Tier 1 solicitation in the Summer of 2019, they are unlikely to know with certainty whether NYISO and the Commission are moving forward with this initiative. Even if this uncertainty has been resolved, it will still be uncertain whether the Federal Energy Regulatory Commission (FERC) will approve the changes to the NYISO tariff and whether federal courts will uphold FERC's decision. Thus, if the 2019 solicitation uses a fixed price REC structure, bidders will be unlikely to incorporate the full value of the proposed carbon price in their bids. The result, therefore, will likely be that customers overpay for those RECs in the event the carbon price is implemented.

While some have argued that variable-priced REC structures would shift the risks of market volatility from developers to customers, an Index REC structure would actually reduce volatility on customer bills. This is because as wholesale market prices go up, the Index REC value goes down, and vice versa. Although these impacts may be small as a percentage of a customer's total bill, there is no question that an Index REC structure would tend to stabilize bill impacts compared to a fixed-price structure.<sup>7</sup>

## **II. Index RECs Would Hedge Against Broad Market Changes but Would Not Insulate Renewable Generators from Temporal and Location-Based Market Signals**

An Index REC procurement mechanism nets an as-bid strike price against a market reference price.<sup>8</sup> The reference price would not depend on what hours the generator operates in

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<sup>7</sup> See also *id.* at 4.

<sup>8</sup> At minimum, such a reference would incorporate energy price, and may also include a capacity reference price. These price references could be established on a NYISO-wide basis, or separate reference prices could be established for different zones.

or the price actually received by the generator at its node, but rather on the hours of operation for a generic reference project. This feature would allow participating generators to retain the incentive to locate at the highest-price nodes and to dispatch in the highest-price hours. Such a structure would preserve the benefits of NYISO market price signals by inducing projects to locate and operate where and when they are most valuable to the system. At the same time, this structure would be administrable, and NYSERDA could adopt it using lessons learned from its Index OREC experience. If anything, the more established nature of the land-based renewables market would make an Index REC program easier to design.

An Index REC also has a strong legal foundation. In *Coalition for Competitive Electricity v. Zibelman*,<sup>9</sup> the Second Circuit upheld New York’s Zero Emission Credit program against a claim that it was preempted. In accord with the Seventh Circuit and the Federal Energy Regulatory Commission’s amicus brief, the Second Circuit rejected the claim that indexing ZECs to market prices intruded on FERC’s jurisdiction. Relying on *Hughes v. Talen*,<sup>10</sup> the Court held that what matters for jurisdictional purposes is the presence of a tether “to ‘wholesale market participation,’ not prices.”<sup>11</sup> Because the Index REC price is a composite of market prices and does not depend on the price the generator receives in the market, it meets the requirements of *Zibelman* and *Hughes*.

### **III. Indexing REC Prices in Future Tier 1 Procurements Would Resolve the Dispute Over “Double Payments”**

Governor Cuomo’s visionary and ambitious goals of 70 percent renewable energy by 2030 and 100 percent emissions-free energy by 2040 require creative approaches to ensure that

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<sup>9</sup> 906 F.3d 41 (2018).

<sup>10</sup> 136 S. Ct. 1288 (2016).

<sup>11</sup> *Coalition for Competitive Electricity* at 51 (quoting *Hughes* at 136 S. Ct. at 1299).

the growth of clean energy is accelerated as quickly and efficiently as possible. The Index REC approach is necessary because it will allow the state to do more with less and it addresses several issues, noted above, that are associated with NYISO's ongoing exploration of incorporating a carbon price in its energy market. Importantly, adopting an Index REC structure resolves the dispute at the heart of the IPPNY/MI petition. While NRDC agrees with American Wind Energy Alliance and ACE-NY that carbon values and REC values do not constitute "double payments," even assuming this were true, an Index REC procurement mechanism resolves this concern because when the carbon price causes wholesale energy prices to rise, the value of the REC would decrease by an [approximately equal] amount. Because the carbon component of the wholesale energy price and the REC value offset each other, they cannot be considered duplicative even if they compensate the same attributes.

#### **IV. Conclusion**

For the foregoing reasons, NRDC, Environmental Advocates of New York, Sierra Club, and Pace Energy and Climate Center request that the Commission grant American Wind Energy Association and Alliance for Clean Energy New York's March 13, 2019 petition for an order modifying the Tier 1 REC procurement process to allow for the use of an Index REC process in time for the 2019 NYSERDA solicitation.

Respectfully submitted on the 12<sup>th</sup> day of April 2019.

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