

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 18, 2025

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 25-E-0270 - Petition of CleanChoice Energy, Inc. for a
Declaratory Ruling Clarifying That Large-Scale
Renewable Projects May Conditionally Sell Tier
1 Renewable Energy Credits to Third Party
Market Participants.

DECLARATORY RULING ON TRANSFERABILITY OF
TIER 1 RENEWABLE ENERGY CREDITS

(Issued and Effective September 22, 2025)

BY THE COMMISSION:

INTRODUCTION

On May 2, 2025, CleanChoice Energy, Inc. (CleanChoice) filed a petition for a declaratory ruling that: (1) owners of large-scale renewable energy projects (LSR projects) may sell or transfer the renewable energy certificates (RECs) generated by such LSR projects to third party market participants, provided that the RECS are not under contract with the New York State Energy Research and Development Authority (NYSERDA); and (2) energy service companies (ESCOs) may purchase or procure RECs from sellers other than NYSERDA, provided that the transaction is recorded in the New York Generation Attribute Tracking System (NYGATS).

BACKGROUND

On April 20, 2023, the Public Service Commission (Commission) adopted the Tier 1 Transition Order that modified the Tier 1 Clean Energy Standard (CES) compliance obligation for Load Serving Entities (LSEs).¹ The Tier 1 Transition Order represented a shift away from the predetermined percentage-based approach to a load share approach similar to other existing LSE obligations under the CES, beginning with the 2025 compliance year. The transition to a load-share approach from the percentage obligation approach discontinued the need for alternative compliance payments (ACPs) and uses a “pay-as-you-go” model applying a uniform wholesale per megawatt hour (MWh) charge to each LSE’s wholesale load to calculate its monthly Tier 1 REC obligation payments. Under this new construct, NYSERDA has the authority to hold voluntary Tier 1 REC sales which reduce the total volume of Tier 1 RECs included in the compliance obligation and the corresponding cost for which LSEs are required to reimburse NYSERDA. The Tier 1 Transition Order also authorizes NYSERDA to purchase Value of Distributed Energy Resources (VDER) Tier 1 RECs from the investor-owned utilities (IOUs).

THE PETITION

CleanChoice argues that a declaratory ruling is warranted to provide owners of LSR projects and potential REC buyers or transferees with clarity that, notwithstanding recent changes in the CES program rules, LSR projects may continue to sell or transfer RECs, which are not under contract with NYSERDA, to third party market participants, and that ESCOs may purchase RECs from all available resources. CleanChoice states

¹ Case 15-E-0302, Order Modifying Clean Energy Standard Tier 1 Obligations (issued April 20, 2023) (Tier 1 Transition Order).

that the RECs referred to in its petition include both Tier 1 RECs as well and non-Tier 1 RECs generated by qualifying renewable resources that are not currently under contract with NYSERDA. CleanChoice further states that they have consistently provided customers the opportunity to support the development of community solar projects across New York through its various products and services. Further, CleanChoice explains that it is in the nascent stages of diversifying its clean energy portfolio through planned development or acquisition of several LSR projects in New York and intends to use LSR projects to meet ongoing renewable energy obligations. CleanChoice raises concerns that the Tier 1 Transition Order suggests that the owners of LSR projects must sell their RECs only to NYSERDA and ESCOs must buy RECs only from NYSERDA. CleanChoice notes that the Commission stated in the Tier 1 Transition Order that it did not see this as a potential market issue at the time and that if there is some evidence of harm by not having the opportunity to purchase Tier 1 RECs from other than NYSERDA, the program can be evaluated in the 2026 CES Review. CleanChoice adds that the Commission does not expect significant volumes of non-contracted Tier 1 RECs to accrue and that those RECs would remain available to support voluntary REC products.

CleanChoice also argues that the Tier 1 Transition Order implies that LSEs may be prohibited from entering into bilateral contracts with REC generators and that ESCOs must procure RECs only from NYSERDA, but also states that non-contracted Tier 1 RECs would remain available to support voluntary RECs products. CleanChoice indicates that they are planning to be included in the group of very few purchasers of Tier 1 RECs outside of the NYSERDA contracting practice, as part of the remaining five percent of the anticipated generation output that is not under contract with NYSERDA. However,

CleanChoice notes that in 2019, ESCOs were permitted to satisfy their minimum renewable generators through NYGATS and bilateral contracts, but the Tier 1 Transition Order created doubt as to whether such condition remains in effect.²

COMMENTS

Alliance for Clean Energy of New York (ACE NY)

ACE NY supports CleanChoice's petition seeking a declaratory ruling that large-scale renewable projects may sell uncontracted RECs to third parties and that ESCOs remain eligible to make bilateral REC transactions with entities besides NYSERDA. ACE NY argues that the Tier 1 Transition Order creates uncertainty that those options to procure unbundled RECs with entities besides NYSERDA are still permitted. Further, ACE NY suggests that the Tier 1 Transition Order states that LSEs may not have the opportunity to purchase Tier 1 RECs from entities other than NYSERDA, but does not specify if this is due to lack of market liquidity or if this is due to market prohibition.

LEGAL AUTHORITY

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of facts; and (ii) whether any action by it should be taken pursuant to a rule. The Commission also may decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16

² Case 15-M-0127 et al., Retail Access, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019) (ESCO Reset Order).

NYCRR Part 8, implementing that statute. Declaratory rulings are not "actions" within meaning of the State Environmental Quality Review Act (SEQRA) and its implementing regulations and, therefore, they may be issued without further SEQRA review.³ This Declaratory Ruling falls within the ambit of this authority by clarifying the applicability of the Commission's prior orders as they relate to the procurement of RECs for CES Tier 1 compliance, as well as for voluntary purposes.

DISCUSSION

CleanChoice requests a declaratory ruling based on two outstanding questions: (1) can large-scale project owners sell or transfer RECs not under contract with NYSERDA to a third-party; and (2) can ESCOs purchase RECs from sellers other than NYSERDA? The Commission finds that it is in the public interest to issue a declaratory ruling in order to provide clarity and certainty surrounding the sale and transfer of Tier 1 RECs and the procurement of Tier 1 RECs by ESCOs.

The Tier 1 Transition Order modified the Tier 1 LSE obligation from a percentage-based obligation approach to a load share obligation method based on the actual Tier 1 RECs available from both NYSERDA's centrally purchased RECs and the utility VDER RECs. Under the Tier 1 Transition Order, all Tier 1 RECs available would now be purchased by NYSERDA, and are the cost basis for the LSE Tier 1 compliance obligation. These Tier 1 compliance RECs are distinguished from voluntary RECs, which are not used for Tier 1 compliance but instead are retired in NYGATS to support voluntary renewable energy offerings. It is this distinction between Tier 1 compliance RECs and voluntary RECs that is central to CleanChoice's petition.

³ See, 16 NYCRR §7.2.

With respect to CleanChoice's request for declaratory ruling regarding the sale of RECs by LSR project owners to third-party market participants, the Commission reaffirms prior determinations that LSR project owners may sell non-NYSERDA contracted Tier 1 RECs to the voluntary market.⁴ The Tier 1 Transition Order specifically calls out the practice of NYSEERDA contracting for 95% of the anticipated generation output of its Tier 1 projects and therefore, the remaining generation would be available to support voluntary REC products. LSR projects not contracted with NYSEERDA continue to have the option to sell their RECs to third parties, regardless of the modification of the Tier 1 program. Though, as discussed more fully below, only those RECs purchased from NYSEERDA can satisfy an LSE's CES Tier 1 obligation. Thus, while an LSR project owner is permitted to sell non-contracted RECs to the voluntary market, those RECs can only be used to support voluntary renewable products and cannot be used for Tier 1 compliance purposes.

Turning to the question regarding an ESCO's ability to purchase RECs from sellers other than NYSEERDA, CleanChoice argues that the Tier 1 Transition Order is in conflict with the ESCO Reset Order. The Commission disagrees. The Tier 1 Transition Order requires LSEs to purchase Tier 1 RECs for CES compliance, while the ESCO Reset Order focuses on the purchase of RECs, not necessarily Tier 1 RECs, in order to back voluntary renewable products. The ESCO Reset Order required that ESCOs back their voluntary renewable product offerings by either: (1) purchasing RECs from eligible renewable generators through NYGATS; (2) purchasing Tier 1 RECs from NYSEERDA; (3) procuring RECs from eligible renewable generators through bilateral contracts; (4) making ACPs to NYSEERDA; or (5) entering into

⁴ Tier 1 Transition Order, p. 17.

bundled energy and REC purchase agreements with eligible renewable generators.⁵ These options apply only to ESCO purchases of voluntary RECs used to back voluntary renewable products and, with the exception of removing the option to purchase ACPs, the Tier 1 Transition Order did not change these voluntary REC requirements. Pursuant to the Tier 1 Transition Order, ESCOs are required to purchase Tier 1 compliance RECs from NYSERDA. Thus, the answer to CleanChoice's second question depends on the type of REC the ESCO is purchasing. Therefore, an ESCO may purchase voluntary RECs from entities other than NYSERDA, provided the purchase complies with the ESCO Reset Order, while an ESCO must purchase Tier 1 compliance RECs only from NYSERDA.

Finally, CleanChoice notes in its petition that the company has an interest in the development or acquisition of several LSR projects in New York and intends to use these projects to meet its ongoing CES obligations.⁶ However, the Tier 1 Transition Order clearly states that, for CES compliance purposes, LSEs must purchase compliance RECs from NYSERDA.

CONCLUSION

The Commission reaffirms that LSR project owners may sell non-NYSERDA contracted Tier 1 RECs to third parties. The Commission further reaffirms that ESCOs may purchase voluntary RECs from entities other than NYSERDA pursuant to the ESCO Reset Order, but must purchase Tier 1 compliance RECs from NYSERDA.

⁵ The Tier 1 Transition Order eliminated ACPs for 2025 compliance.

⁶ Clean Choice Petition, p. 3.

The Commission finds and declares:

1. Owners of large-scale renewable energy projects may sell or transfer the renewable energy certificates generated by such projects to third party market participants, provided that the renewable energy certificates are not under contract with the New York State Energy Research and Development Authority, as discussed in the body of this Order.

2. Energy Service Companies may purchase or procure renewable energy certificates to be used to back voluntary renewable products from sellers other than the New York State Energy Research and Development Authority, but must purchase Clean Energy Standard Tier 1 compliance Renewable Energy Certificates from the New York State Energy Research and Development Authority, as discussed in the body of this Order.

3. This proceeding is closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary