

**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

**INITIAL COMMENTS
OF
MULTIPLE INTERVENORS**

Dated: October 2, 2019

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TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
COMMENTS.....	6
Question No. 1	6
Question No. 2	11
Question No. 3	12
Question No. 4.	14
Question No. 5.	15
Question No. 6.	17
Question No. 7.	19
CONCLUSION.....	19

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Initial Comments in response to the Notice Soliciting Comments (“Notice”) issued by the New York State Public Service Commission (“Commission”) on August 8, 2019, in Case 15-E-0302.¹ The Notice solicits comments on a series of questions related to the possible adoption and implementation of a renewable generation procurement process reliant upon indexed-priced Renewable Energy Credits (“RECs”). For years, the Commission has relied exclusively on fixed-price RECs. For the reasons set forth herein, and in comments submitted previously in this proceeding, Multiple Intervenors opposes modifying the existing procurement process to rely on indexed RECs.

Initially, Multiple Intervenors reminds the Commission that it has yet to resolve the significant issue that precipitated the request by certain parties to transition to indexed RECs. Indeed, a petition that advanced such issue now has been pending before the Commission for almost 15 months. The Commission’s failure to act on this issue potentially could cost consumers hundreds of millions of dollars.

Specifically, on July 9, 2018, Multiple Intervenors and Independent Power Producers of New York, Inc. (“IPPNY”) – two parties with diverse and sometimes adverse interests on regulatory issues – filed a joint petition with the Commission seeking to protect New York consumers and the State’s competitive wholesale electricity markets from potential double-

¹ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*.

payments for the same attribute if carbon pricing were to be adopted in those markets administered by the New York Independent System Operator, Inc. (“NYISO”).²

In that petition, Multiple Intervenors and IPPNY explained and demonstrated that:

- pursuant to Commission rulings in this proceeding as well as in Cases 15-E-0751 and 18-E-0071, electricity suppliers are or will be compensated for non-carbon-emitting generation attributes in the form of (i) RECs (for land-based renewable generation facilities in front of the meter), (ii) the Environmental Value in the Value Stack (for renewable generation facilities behind the meter), and (iii) Offshore RECs (“O-RECs”) (for offshore wind generation facilities);
- under the NYISO’s carbon pricing proposal, electricity suppliers that do not emit carbon would realize substantially higher energy market revenues;
- the possible future implementation of carbon pricing would result in double-payments by electric customers in that they would be paying for non-carbon-emitting generation attributes via Commission programs (*i.e.*, RECs, the Environmental Value, O-RECs) and again, for a second time, via higher prices caused by carbon pricing in NYISO-administered energy markets; and
- the amounts in question are substantial, with existing REC commitments in excess of \$100 million annually.

(*See, generally*, MI/IPPNY Petition, *passim*.)

² See Cases 18-E-0071, *In the Matter of Offshore Wind Energy*, 15-E-0751, *In the Matter of the Value of Distributed Energy Resources*, and 15-E-0302, *supra*, and Matter 17-01821, *In the Matter of Carbon Pricing in New York Wholesale Markets*, Petition of Multiple Intervenors and Independent Power Producers of New York, Inc. for Relief to Protect New York Consumers and the State’s Competitive Wholesale Electricity Markets From Potential Double-Payments for the Same Attribute (dated July 9, 2018) (hereinafter, the “MI/IPPNY Petition”).

On July 12, 2018, the Commission issued an order in Case 18-E-0071 with respect to offshore wind. While not ruling explicitly on the MI/IPPNY Petition, the Commission recognized that: “the double payment issue has potential to be substantial” and the “problem will exist ... not only for fixed OREC contracts not yet signed, but also for REC contracts already signed”³ Rather than resolving the double-payment concern, however, the Commission recommended that the issue be addressed by the NYISO as part of any carbon pricing proposal.⁴

The NYISO responded initially by advancing a proposal that would have imposed the carbon charge on non-carbon-emitting facilities that already are being compensated for carbon-free generation attributes through retail rate mechanisms, such as RECs.⁵ Such proposal would have eliminated the double-payment concern. In response to objections by certain stakeholders, however, the NYISO subsequently withdrew that proposal.⁶ Consequently, the latest iteration of the NYISO’s carbon pricing proposal includes no mechanism or provision that would address, or in any way prevent, the double-payment problem described in the MI/IPPNY Petition and recognized by the Commission as having the “potential to be substantial.”

³ Case 18-E-0071, *supra*, Order Establishing Offshore Wind Standard and Framework for Phase I Procurement (issued July 12, 2018) at 59-60.

⁴ *Id.* at 60.

⁵ See, e.g., NYISO Presentation, *Carbon Pricing: Treatment of Existing REC Contracts* (dated October 11, 2018) at 3-4; available at <https://www.nyiso.com/documents/20142/3715284/20180924%20NY%20REC%20Resources.pdf/0b79de72-a948-22d8-9439-3cce7bad4c61>; see also *id.* at 2 (indicating that the intent of such proposal “is to eliminate the potential for double payment to suppliers whose carbon dioxide emissions reductions are already captured by NY REC contracts entered into before the approval of Carbon Pricing market rules by NYISO stakeholders”).

⁶ See, e.g., NYISO Presentation, *Carbon Pricing: Treatment of Existing REC Contracts – Proposal Update* (dated December 3, 2018) at 3-4; available at <https://www.nyiso.com/documents/20142/3760282/20181203%20Carbon%20Pricing%20-%20NY%20REC%20Resources%20vFinal.pdf/1aac0a92-bcff-f19f-d58f-c4c94b397168>.

Approximately eight months after the filing of the MI/IPPNY Petition, American Wind Energy Association (“AWEA”) and Alliance for Clean Energy New York (“ACENY”) filed a statement in opposition thereto and, within that pleading, also petitioned the Commission to utilize indexed RECs in future procurements for renewable generation.⁷ AWEA and ACENY justified the use of indexed RECs, in material part, as a means of resolving the concern regarding double-payments advanced in the MI/IPPNY Petition. (See AWEA/ACENY Petition at 9-10.)

On April 15, 2019, IPPNY filed a response to the AWEA/ACENY Petition.⁸ IPPNY advocated therein that the Commission should: (a) reject the arguments raised in the AWEA/ACENY Petition opposing the MI/IPPNY Petition; (b) reject the arguments raised in the AWEA/ACENY Petition advocating for RECs to be indexed to NYISO-administered wholesale electricity prices; and (c) in event carbon pricing is implemented, utilize RECs indexed to the carbon adder to resolve double-payment concerns. (See IPPNY Response, *passim*.)

On April 22, 2019, Multiple Intervenors filed a response to the AWEA/ACENY Petition.⁹ Multiple Intervenors advocated therein that the Commission should: (a) reject the arguments raised in the AWEA/ACENY Petition opposing the MI/IPPNY Petition; (b) reject the arguments raised in the AWEA/ACENY Petition advocating for RECs to be indexed to NYISO-

⁷ Case 15-E-0302, *supra*, and Matter 17-01821, *supra*, Statement of American Wind Energy Association and Alliance for Clean Energy New York in Opposition to Petition of Multiple Intervenors and Independent Power Producers of New York, Inc. and Petition of American Wind Energy Association and Alliance for Clean Energy New York for an Order Modifying the Clean Energy Standard Tier 1 Procurement Process (dated March 13, 2019) (hereinafter, “AWEA/ACENY Petition”).

⁸ Case 15-E-0302, *supra*, and Matter 17-01821, *supra*, Comments of Independent Power Producers of New York, Inc. (dated April 15, 2019) (hereinafter, the “IPPNY Response”).

⁹ Cases 18-E-0071, 15-E-0751 and 15-E-0302, *supra*, and Matter 17-01821, *supra*, Response of Multiple Intervenors in Opposition to the Petition of the American Wind Energy Association and Alliance for Clean Energy New York (dated April 22, 2019) (hereinafter, the “MI Response”).

administered wholesale electricity prices; and (c) in the event carbon pricing is implemented, utilize dual fixed-price REC bids (*i.e.*, with and without carbon pricing) to resolve double-payment concerns. (*See* MI Response, *passim*.)

On August 8, 2019, the Notice was issued, soliciting comments on a series of questions related to possibly adopting and implementing a renewable generation procurement process reliant upon indexed RECs. Multiple Intervenors responds to those questions herein, but also expresses its significant concerns that the Commission has yet to resolve the double-payment issue that precipitated the AWEA/ACENY Petition.

Upon information and belief, during the approximate 15 months that the MI/IPPNY Petition has been pending, New York State Energy Research and Development Authority (“NYSERDA”), acting under the Commission’s authority, entered into long-term contracts to procure RECs, while behind-the-meter renewable generation facilities have qualified for the Environmental Value of the Value Stack. To Multiple Intervenors’ knowledge, no provision has been made in those contracts or in the relevant utility tariff provisions for the possible future implementation of carbon pricing and the avoidance of double-payments by customers. Consequently, it appears that while the MI/IPPNY Petition has remained pending, the exposure of captive customers to potential double-payments in the event carbon pricing is implemented has increased, possibly materially. Unless the Commission is certain that carbon pricing will not be implemented, it should be taking action to eliminate the risk of double-payments by customers.

COMMENTS

Multiple Intervenors hereby responds to the questions posed in the Notice.

- 1. Are there specific benefits, challenges, and/or considerations that should be addressed in considering the proposed Indexed REC procurement mechanism?**

Yes. First and foremost, Multiple Intervenors opposes modifying the existing renewable generation procurement process by transitioning from reliance on fixed-price RECs to indexed-price RECs. The potential use of indexed RECs inappropriately would shift market price risk – and associated volatility – from private developers to captive customers.

Pursuant to the existing procurement process, developers of renewable generation facilities submit fixed-price bids to NYSERDA to supply RECs. If selected for a REC contract, a developer is paid a fixed price, on a per MWh basis, for the non-carbon-emitting generation attribute. The remainder of a facility's revenues come from wholesale market revenues or bilateral contractual arrangements that, upon information and belief, are influenced heavily by wholesale market prices. Thus, private developers currently bear the risks of wholesale market prices and associated volatility. That is fair. After all, such parties choose to develop renewable generation projects and assume those risks willingly.

Unlike private developers, customers are accorded no say whatsoever as to whether, when, or where a particular renewable generation project should be developed. Customers also have no say in the magnitude of the bids the developers choose to submit to supply RECs (or, for that matter, the magnitude of the bids accepted by NYSERDA for REC contracts). A significant part of the Commission's motivation in opening the generation market to competition several decades ago was a desire to have developers assume generation-related risks – including market price risk – that previously were imposed on captive customers by

utilities.¹⁰ To prospectively rely on indexed RECs would shift many of those risks right back onto electric customers.

In 2006, the Commission opted for reliance on fixed-price RECs, as opposed to an approach similar to indexing such as Contracts for Differences (“CFDs”), reaffirming its preference that generation developers – and not customers – bear market price risks, concluding that:

We also agree that it would be contrary to the concept of a deregulated market for us to forecast future energy prices to determine premiums. *It is far more appropriate for developers and the financial community to perform that exercise and take those risks.*¹¹

Currently, the Commission and NYSERDA are able to project the financial cost of REC contracts with a reasonable degree of accuracy. For each facility, an estimated cost can be calculated by multiplying the fixed-price REC cost by the projected output of the facility. While a generation facility’s annual output will fluctuate, and can be impacted by different circumstances (*e.g.*, unplanned outages or weather variations impacting production), the Commission and NYSERDA currently are able to estimate the annual financial cost of a REC contract with a degree of accuracy, thereby allowing for payments to be forecast and then made by load-serving entities (“LSEs”) with only modest periodic reconciliations.

¹⁰ See, *e.g.*, Case 94-E-0952, *In the Matter of Competitive Opportunities Regarding Electric Service*, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996) at 30-31 (concluding that: “Competitive providers ... would bear more of the risk of investment decisions, and customers less, than under regulation”).

¹¹ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding Retail Renewable Portfolio Standard*, Order Authorizing Additional Main Tier Solicitations and Directing Program Modifications (issued January 26, 2006) at 16 (emphasis added).

Thus, to the extent customers desire a fully or largely fixed-price for electric supply, energy service companies acting as LSEs generally are able to offer such products because their REC obligations are known, at least within some limited and foreseeable range, due to the existing reliance on fixed-price REC contracts. For example, in discussing the renewable generation procurement process, the Commission concluded previously that: “Fixed prices ... provide consumers ... with definitive costs expected under the contracts.”¹²

In contrast, if indexed RECs were to be utilized, such stability and predictability would be weakened significantly. Wholesale electricity prices naturally are volatile from day to day, month to month, and year to year. With indexed RECs, the cost of RECs will not be predictable with any accuracy whatsoever. As market prices decline, the cost of RECs would increase, and *vice versa*. Thus, even with the same level of production, the cost of a REC contract with a single supplier could fluctuate wildly on an annual – or even monthly – basis. It would become increasingly difficult – if not impossible – for LSEs to price forward electricity supplies to customers due to the uncertainty of their REC obligations.

As the State mandates the procurement of ever-increasing amounts of renewable resources, the total annual cost of RECs to customers will rise, likely substantially, even if the cost of individual RECs were to decline over time. If RECs were to be indexed to wholesale market prices, this financial obligation on customers would be (i) quite volatile, (ii) nearly impossible for the vast majority of customers to budget for, and (iii) especially significant during periods of lower wholesale market prices. Customers desiring hedged electricity supplies almost certainly would pay a higher premium for them due to the increased risk and volatility associated with REC costs. Renewable generation developers, on the other hand, are very capable of

¹² *Id.*

hedging against market price uncertainty and, as AWEA and ACENY acknowledged previously, already protect themselves from those risks by obtaining financial hedges. (See AWEA/ACENY Petition at 7-8.) Inasmuch as renewable generation developers are able to procure hedges against wholesale market price volatility, there is no compelling need to transition to indexed RECs, which would shift market price risks from willing, private developers to captive customers.

Finally, if indexed RECs are considered, the Commission also would need to address periods of very low and potentially negative market prices, as well as periods of very high market prices. For example, if a renewable developer enters into an indexed REC contract intended to provide it with \$65 per MWh in total revenues (*i.e.*, market revenues plus REC revenues), is there any limit to customer exposure under such contract? For instance, if energy prices are negative \$10 per MWh during certain hours, will the cost of that REC increase to \$75 per MWh during those hours to compensate the developer for negative prices? If so, that would be providing renewable generation owners with an inappropriate incentive to maximize output during periods when market prices clearly are signaling that their generation is not needed. Such an outcome also could create increased hours where subsidized renewable generation is displacing unsubsidized renewable generation (*e.g.*, New York Power Authority hydropower facilities), which clearly is contrary to the public interest. The Commission noted previously that during hours in which the NYISO real-time price is zero or negative, “renewable generation at one site may be displacing renewable generation at some other nearby site, yielding no net contribution to the State’s renewable generation goals.”¹³

Additionally, consider the opposite scenario: what happens in the above example if market prices rise to \$90 per MWh in a given year? In that circumstance, the value of the

¹³ Case 03-E-0188, *supra*, Order Resolving Main Tier Issues (issued April 2, 2010) at 21.

indexed REC for that year presumably declines to a negative \$25 per REC. Contracts for the procurement of RECs based on indexed prices would require financial assurances from developers ensuring that NYSERDA – and, by extension, electric customers – would be reimbursed for any and all amounts owed under a negative REC price scenario.

Thus, there are numerous problems associated with indexed RECs – for example, an inappropriate shifting of risk from private developers to captive customers and difficult, if not insurmountable, administrative issues. These problems would need to be addressed fully before any transition to indexed RECs could be contemplated seriously. In the past, the Commission repeatedly has resisted calls by renewable developers for indexed RECs. The problems inherent with such a procurement approach have not changed.

Moreover, there is no compelling reason to modify the longstanding reliance on fixed-price REC contracts. Back in 2010, the Commission noted that interest in supplying RECs pursuant to fixed-price contracts was robust:

[T]he recently concluded fourth RPS solicitation attracted a substantial number of bids at reasonable prices and we have every reason to believe that the current in-progress fifth solicitation will be robust and has attracted the interest of a sizeable number of bidders. *These results have been obtained without offering developers any help in hedging the risk of the future market price of electricity.*¹⁴

There is no indication that current interest in responding to fixed-price REC solicitations is deficient; indeed, State pronouncements tout just the opposite. Accordingly, the Commission should not modify the existing procurement process to benefit private developers at the expense of captive customers.

¹⁴ *Id.* at 20-21 (emphasis added). See also *id.* at 21 (noting the “substantial administrative effort” needed to account for variable pricing schemes).

2. Is the proposed Indexed REC structure an appropriate pathway to address NYISO market changes and potential market reforms?

No. Initially, the question posed fails to identify specific NYISO market changes and potential market reforms. Other than the possible implementation of carbon pricing, it is not clear to Multiple Intervenors to what specific NYISO market changes and/or potential market reforms the question refers. Moreover, the decision whether to continue relying on fixed RECs or possibly transition to indexed RECs appears unrelated to carbon pricing other than with respect to the issue of double-payments by customers, which was raised with the Commission in the MI/IPPNY Petition and is addressed again, *supra*, in Multiple Intervenors' Preliminary Statement hereto. Multiple Intervenors further notes that double-payment concerns (in the event carbon pricing is implemented) can be addressed satisfactorily via measures other than indexed RECs. (See MI Response at 14-16.)

As detailed in response to Question No. 1, *supra*, indexed RECs are problematic from the consumer perspective in many respects. Prior to implementing indexed RECs, the Commission should identify specifically (i) the NYISO market changes and (ii) the potential market reforms it is seeking to address. There may – and likely are – a myriad of preferable alternatives to indexed RECs that could serve similar purposes.

Previously, the Commission considered a form of variable pricing for RECs – CFDs. The Commission refrained from relying upon them – and chose to rely solely on fixed-price RECs – in order to work in harmony with NYISO-administered competitive markets:

We are persuaded that use of CFDs could cause unintended consequences when used in the markets administered by the NYISO regardless of the design. Use of the fixed price method

would support the NYISO markets and influence the siting of projects in areas where they will be of most value.¹⁵

Indexed RECS, on the other hand, can clash with NYISO-administered wholesale electricity markets, thereby undermining competition and harming customers. There is no compelling reason to modify the Commission's prior conclusion favoring fixed RECs now.

Furthermore, NYISO market rules are best addressed in and through the NYISO stakeholder process and before the Federal Energy Regulatory Commission ("FERC"), the entity responsible for regulating NYISO-administered competitive wholesale electricity markets. Other than the double-payment concerns raised by Multiple Intervenors and IPPNY in the event that carbon pricing is implemented – which concerns can and should be addressed by means other than indexing RECs to wholesale market prices – the Commission has yet to identify any specific NYISO market rules or potential market reforms that would warrant a change to the current reliance on fixed-price RECs.

3. Would an Indexed REC structure lower financing costs for renewable generators and lead to lower and less volatile prices for consumers?

It is not clear whether or not an indexed REC structure would reduce financing costs for renewable generators. Multiple Intervenors contends, however, that if, *arguendo*, indexed RECs were to lead to a reduction in financing costs for renewable generators, it only would be because wholesale market price risks and associated volatility were shifted away from such generators and onto captive customers. (See Point I, *supra*.) It stands to reason that if some of the risks associated with developing and owning renewable generation are eliminated – under this scenario, because they are transitioned onto the backs of customers – financing costs may decline.

¹⁵ Case 03-E-0188, *supra*, Order Authorizing Additional Main Tier Solicitations and Directing Program Modifications at 16.

Importantly, however, if financing costs were to decline for renewable generators in response to utilizing indexed RECs, there are no guarantees that all – or even any – of those cost savings ultimately would be realized by customers. Renewable generators responding to future NYSERDA solicitations would be under no obligation to reflect reduced financing costs in their bids. Moreover, while highly-competitive solicitations theoretically could force bidders to reflect some amount of financing-related cost savings in bids, Multiple Intervenors is very concerned that given the State’s greatly-increased renewable generation goals, future solicitations will be far less competitive because the statutorily-mandated “demand” for renewable generation will outpace feasible supply, thereby reducing any perceived need on the part of bidders to pass financing-related savings on to customers. The entities advocating for indexed RECs generally are renewable generation developers and their representatives. Are they advocating such positions because they want to be paid less for RECs in order to save customers money or for their own financial interests?

Furthermore, indexed RECs likely would result in increased hedging costs for customers. As addressed in Point I, *supra*, the annual financial obligations of LSEs and their customers with respect to the procurement of RECs currently is relatively stable and predictable, but that would not be the case if indexed RECs are utilized. With indexed RECs, the costs per REC could change materially on an annual – or even monthly – basis due to wholesale market price volatility, and LSEs and their customers would be responsible for such changes (which likely would lag the underlying market price changes by months, if not longer). Customers’ financial obligations with respect to RECs – which will become increasingly large as more and more renewable generators receive REC contracts – would become extremely volatile and difficult to predict. Consequently, customers desiring to hedge their electric supply costs are

likely to experience cost increases procuring such hedges. Such cost increases easily could exceed any speculative savings in financing costs that renewable developers choose to pass on to customers.

Multiple Intervenors' members are very price-sensitive with respect to electricity costs. If Multiple Intervenors believed indexed RECs were in customers' best interests and would reduce costs, it would be supportive of such a transition. That is not the case, however, and Multiple Intervenors fears that any transition to indexed RECs would lead to unanticipated and undesirable outcomes for customers.

4. If the proposed Indexed REC option were advanced, should NYSERDA continue to also solicit bids for Fixed REC structures? Provide any details describing the preferred process to implement such an approach, including program design, evaluation and contracting considerations.

For the reasons set forth herein, the Commission should not rely on indexed RECs. If, *arguendo*, the Commission were to rely upon indexed-price REC bids, it is not clear to Multiple Intervenors how such bids would be evaluated with – and against – fixed-price REC bids. Such comparisons would be of the “apples-to-oranges” variety. To evaluate an indexed bid versus a fixed bid, NYSERDA and/or the Commission would need to draw conclusions as to future wholesale markets prices over multiple decades, something that Multiple Intervenors doubts can be accomplished (by any party) with a high degree of accuracy. To the extent the Commission elects to solicit both fixed and indexed REC bids in the future, Multiple Intervenors recommends that it utilize a presumption in favor of fixed REC contracts for the reasons stated herein unless the consumer benefits (*i.e.*, cost savings) associated with an indexed REC contract are demonstrably compelling.

Instead of making the bid solicitation and evaluation process far more complex, the Commission instead should focus on eliminating the possibility of double-payments by customers in the event that carbon pricing is implemented. Pursuant to Multiple Intervenors' recommended solution, developers would bid for fixed-price RECs in response to competitive solicitations, as is the case today. Additionally, developers would submit a second fixed-price (and presumably much lower) REC bid that only would be applicable if and when carbon pricing were to be implemented. NYSERDA would evaluate both bids and offer contracts that incorporate both bids. This is a workable solution that is tailored to address double-payment concerns, is administratively simple, and, importantly, does not shift market price risks from private developers to captive customers. (See MI Response at 14-16.)

5. **What are appropriate Indexed REC structures to address potential implementation issues such as the derivation of a reference energy price and reference capacity price, treatment of negative locational marginal based prices (LBMPs), bid evaluation methodology, and design considerations necessary to maintain appropriate market signals and an appropriate balance of risk between developers and ratepayers? Explain which structures the commenter views as most optimal, and why.**

As advocated, *supra*, Multiple Intervenors opposes the adoption of an indexed REC procurement structure. If, *arguendo*, the Commission were to adopt such a structure over Multiple Intervenors' objections, then, at a minimum, the following four design considerations should be incorporated into such structure.

First, RECs should be indexed off of the location-based marginal price ("LBMP") in effect in the NYISO Load Zone in which the renewable generation facility is located. The NYISO's competitive wholesale electricity markets are designed to provide accurate price signals; such signals could be thwarted or undermined by a REC procurement approach that ignores them. Moreover, if the purpose of indexed RECs is to ensure that a renewable

generation facility achieves a certain level of revenues, then the indexing should reflect accurately the market revenues that are in fact realized by each such facility. Furthermore, failing to rely on zonal (or more localized) LBMPs would diminish the effect of locational price signals and could lead to more renewable generation projects being sited where they are not needed.

Second, the minimum LBMP that should be utilized for indexed purposes should be no lower than \$0.00 per MWh. Under no circumstances should customers be required to subsidize renewable generation facilities for that portion of LBMPs below zero. Negative energy prices signal that such output is not needed, and potentially displacing unsubsidized renewable generation. Furthermore, committing customers to funding indexed RECs based off of negative LBMPs would expose them to theoretically unlimited costs. There is absolutely no public interest to be served by forcing customers to subsidize renewable generation facilities for that portion of LBMPs below zero.

Third, under an indexed REC structure, there is a possibility that renewable generation facilities could, on occasion, owe customers money. For instance, if the indexed REC is intended to ensure a facility total revenues (*i.e.*, market revenues plus REC revenues) of \$65 per MWh, and market prices themselves spike to \$90 per MWh in a given month, that facility would owe customers \$25 per MWh for that month. Inasmuch as customers would be responsible for ensuring renewable generation facilities what is tantamount to a guaranteed level of revenues irrespective of actual market prices, facilities should not be permitted to retain surplus revenues when the risks are so disproportionately being placed on customers. Accordingly, indexed REC contracts, if relied upon, should contain appropriate security provisions ensuring payment of any amounts due and owing from renewable generation facilities to the benefit of customers.

Finally, an indexed REC procurement structure, if implemented, should ensure that new revenue streams created by market rules or regulatory changes (*e.g.*, carbon pricing, any new cap-and-trade programs) count fully towards the indexed REC price contained in a contract. Customers should not be placed at enormous financial risk to essentially guarantee a renewable generation facility a certain level of revenues, only to have new revenue streams not count against that obligation.

6. Are there any additional potential implementation issues associated with the proposed Indexed REC procurement structure?

There are numerous potential implementation issues associated with a possible transition to a REC procurement structure reliant upon indexed bids. Some such issues have been identified, *supra*, in response to Question Nos. 1-5. There are a number of additional implementation issues, however, that also would need to be addressed by the Commission.

Initially, it is not clear to Multiple Intervenors how the Commission – or NYSERDA – would determine the cost of RECs that LSEs would be required to purchase each calendar year if REC prices are indexed. Would projected, future market prices be estimated for each NYISO Load Zone in which one or more renewable generation facilities are located? Additionally, actual market prices presumably will differ from such projected prices, sometimes by substantial amounts. How – and how often – would differences between quoted REC prices and actual REC prices be calculated and reconciled?

Under the existing structure, NYSERDA estimates how many RECs each LSE is required to procure, and the REC price is fixed. Thus, any required reconciliations typically are limited to the number of RECs – based on the output of renewable energy facilities with REC contracts and each LSE’s actual market share. Upon information and belief, such reconciliations generally are modest in magnitude, compared to each LSE’s annual REC cost. Under a potential

indexed REC structure, however, the actual cost of RECs will be a constantly-moving target, always subject to change, and such change can be substantial from year to year, and even from month to month, depending upon market conditions.

Additionally, while a fixed REC is easy to describe and implement via contract, indexed RECs are much more challenging. If an indexed REC structure is adopted, rules will need to be developed in terms of exactly how market revenues will be calculated, and those provisions will need to be reflected in future contracts. As asserted, *supra*, market revenues should be specific to the NYISO Load Zone in which each renewable generation facility is located. Such revenues also should be reflective of each facility's actual output. In other words, average market prices should not be utilized, because different facilities will have markedly different levels of output during certain hours of every day. The Commission would need to determine exactly what documentation is required, and payments under every single contract would require extensive calculations that will need to be audited given that they collectively would involve literally millions – if not billions – of dollars of customer funds.

The Commission should not underestimate the numerous implementation issues associated with potentially transitioning to indexed RECs. Previously, the Commission concluded that “the virtues of simplicity and transparency inherent in the current RPS fixed price process is [sic] valuable, and that an approach that uses a hedge would undoubtedly be more complex, and perhaps less transparent.”¹⁶ It also concluded that, compared to hedged arrangements such as CFDs, “[t]he fixed price method ... will make bid evaluation easier to

¹⁶ Case 03-E-0188, *supra*, Order Resolving Main Tier Issues at 21.

perform” and “Fixed prices enable easier administration of the RPS Program.”¹⁷ Nothing has changed that would alter the validity of the Commission’s prior conclusions on this topic.

7. If the Commission were to direct the adoption of indexed pricing, are there changes in program implementation, project selection, or other existing program rules that would be necessary or advisable?

Multiple Intervenors’ recommendations in response to these questions are subsumed in its responses, *supra*, to the other questions proposed in the Notice. As detailed therein, Multiple Intervenors opposes transitioning to a procurement process reliant upon indexed RECs.

CONCLUSION

For all the foregoing reasons, the Commission should refrain from modifying the existing renewable generation procurement process in favor of reliance on indexed RECs. The AWEA/ACENY Petition should be denied. Additionally, the Commission should grant, expeditiously, the MI/IPPNY Petition and resolve the double-payment issue related to the possible implementation of carbon pricing in some manner other than by indexing RECs to wholesale electricity prices.

Dated: October 2, 2019
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Respectfully submitted,

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¹⁷ Case 03-E-0188, *supra*, Order Authorizing Additional Main Tier Solicitations and Directing Program Modifications at 16.