



February 6, 2023

**VIA ELECTRONIC MAIL**

Hon. Michelle L. Phillips  
Secretary  
New York state Public Service Commission  
3 Empire State Plaza  
Albany, New York 12223-1350  
[secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

Re: Case 15-E-0302 and Case 15-E-0751

Dear Secretary Phillips:

The Alliance for Clean Energy New York and Advanced Energy United, formerly known as Advanced Energy Economy, on behalf of our member companies, submits for filing the attached 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* (“Petition”) filed with the New York State Public Service Commission on November 9, 2022 by Staff of the New York State Energy Research and Development Authority (“NYSERDA”), in the above-referenced proceedings.

Respectfully submitted,

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**Before the 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**

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**Case 15-E-0302**

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**In the Matter of the Value of Distributed  
Energy Resources**

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**Case 15-E-0751**

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

*Submitted by*  
**The Alliance for Clean Energy New York  
Advanced Energy United**

**Dated: February 6, 2023**

## **I. Introduction**

In response to the New York State Energy Research and Development Authority (“NYSERDA”) *Petition Regarding Modification of the Clean Energy Standard to Transition from a Defined Percentage Obligation to a Load Share Obligation*<sup>1</sup> (“Petition”) filed with the New York State Public Service Commission (“Commission”) on November 9, 2022 in the above-referenced proceedings, the Alliance for Clean Energy New York (“ACE NY”) and Advanced Energy United (“United”) hereby submit these comments on NYSEDA’s proposal to transition the Clean Energy Standard (“CES”) Tier 1 compliance obligation for Load Serving Entities (“LSEs”) away from the

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<sup>1</sup> November 9, 2022 NYSEDA Petition Regarding Modification of the Clean Energy Standard to Transition from a Defined Percentage Obligation to a Load Share Obligation; online in the New York State Department of Public Service’s Document and Matter Management System  
<https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=295599&MatterSeq=48235>

current approach and toward a load share obligation approach similar to other existing LSE obligations under the CES.

In the Petition, NYSERDA stated to the Commission that the proposed transition would benefit New York State ratepayers, provide further consistency across the various LSE obligations under the CES, and provide administrative efficiency for NYSERDA and LSEs.

Under the new approach proposed in this petition, 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. There would be no more need for Alternative Compliance Payments (“ACPs”).

While this proposal may simplify NYSERDA’s administration of the CES, our organizations are concerned that it would likely have unintended impacts on the Tier 1 REC market in New York and even possibly on Tier 2 resources, *i.e.*, renewable electricity generators that began operation in New York before January 1, 2015. Our concerns about the unintended consequences of the CES Tier 1 structure proposed in this Petition are summarized in these Comments.

**ACE NY** is a member-based organization with a mission of promoting the use of clean, renewable electricity technologies and energy efficiency in New York State to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Our diverse membership includes companies engaged in the full range of clean energy technologies as well as consultants, academic and financial institutions, and not-for-profit organizations interested in our mission.

**United** is a national association of businesses that are making the energy we use secure, clean, and affordable. United works to accelerate the move to 100% clean energy and electrified transportation in the U.S. Advanced energy encompasses a broad range of products and services that constitute the best available technologies for meeting our energy needs today and tomorrow. These include energy efficiency, demand response, energy storage, solar, wind, hydro, nuclear, electric vehicles, and the smart grid. United represents more than 100 companies in the \$238 billion U.S. advanced energy industry, which employs 3.3 million U.S. workers, including 157,000 individuals in the Empire State.

United and ACE NY are referred to collectively in these comments as “advanced energy companies,” “we,” or “our.” Our detailed comments follow.

## II. Comment Summary

ACE NY and United have concerns regarding the approach laid out in the Petition to streamline NYSERDA’s administrative responsibilities by requiring LSEs to buy all of the RECs that NYSERDA has available for sale in any given year.

We strongly suggest that the concerns described herein be further explored and assessed by NYSERDA and the Commission before the Petition is approved, so that all of the ramifications to the Tier 1 market, load-serving entities, and renewable energy developers and operators can be more fully known. We also suggest that a Commission-sponsored Technical Conference to explore the issues raised by this proposal would be in the public interest.

Our main concerns are that the change in the CES structure will reduce the potential for renewable energy generators to sell Tier 1 RECs to an LSE in a bilateral contract; will potentially reduce the opportunities for Tier 2 generators to sell RECs to the voluntary market; and may reduce general accountability in the CES program in New York. We strongly believe that, at a minimum, a mechanism be included in this proposed structure to encourage LSEs to choose to enter into bilateral agreements with Tier 1 renewable energy generators in New York in order to meet their CES obligation. This mechanism, which must maintain an incentive for a LSE to procure Tier 1 RECs, would be akin to the approach proposed for distributed resources in that utilities will still benefit somewhat from interconnecting distributed renewables because the RECs resulting from the interconnection can flow to the utility and then be sold to NYSERDA. Even with such a mechanism, we remain concerned that the re-structuring proposed by this Petition would eliminate the possibility of bilateral contracts between LSEs and renewable generators. These issues are discussed in more detail below.

### III. Discussion

#### A) **General Response to this Petition**

We recognize the administrative burden created by the need to continually change the LSE's obligation to purchase RECs given the uncertainty in the number of RECs that will be available. We further acknowledge that requiring the payment of ACPs adds costs to ratepayers without significant benefits to either ratepayers or renewable energy providers, in the context of New York's central procurement model. (Although we note that if ACP payments flow to NYSERDA and are recycled into the Large Scale Renewables Program, they are in fact being returned to ratepayers by avoiding any additional ratepayer charges for another purpose, such as an administrative adder on the REC sale price, for example). However, ACE NY and United are concerned that the elimination of the ACP removes an economic signal tied to the state meeting its climate goals, and the Petition does not propose any mechanism to replace the ACP to provide assurance that these critical goals will be met. We recommend that NYSERDA and the Commission address this concern before approving this portion of the Petition.

ACE NY and United also see the potential value in NYSERDA being authorized to sell Tier 1 RECs to voluntary purchasers, especially to New York City, New York State agencies, or other public entities subject to Executive Order 22, in that it can potentially reduce the cost for the rest of the New York ratepayers for the Tier 1 Program. However, because the voluntary market is still very early in development, and in consideration of the fact that recent divergence tests are showing that the state is falling behind on achieving its goals, we believe that allowing NYSERDA to sell

Tier 1 RECs to the voluntary market as proposed raises serious questions regarding the additionality of those voluntary purchases. We suggest that the decision to allow NYSERDA to sell Tier 1 RECs to the voluntary market should be further explored.

Elimination of the ACP is dependent on NYSERDA continuing to drive the market forward with solicitations in conjunction with the state working diligently to overcome project development and siting delays. If the central procurement model is working as intended, and New York is successful in having projects built, then it would appear that the major re-design of the CES proposed by this Petition would not be necessary.

### **B) Concern About Impact on the Potential for Sale of Tier 1 RECs to Utilities**

Our major concern with the Petition stems from its potential to chill or prevent opportunities for generators selling Tier 1 RECs directly to load serving entities (LSEs).

The current design of the CES allows for an LSE to meet its Tier 1 obligation by purchasing Tier 1 RECs from NYSERDA, or purchasing RECs from generators or another entity, or using RECs acquired through the Value of Distributed Energy Resources (VDER) Program, or by paying the ACP. In practice, LSE have largely procured RECs from NYSERDA or paid the ACP. In the Petition, NYSERDA cites that LSEs have not, to date, procured significant quantities of Tier 1 RECS outside of NYSERDA's REC procurements directly from renewable energy generators. We do not contest that. Our members do report, though, that there is at least some current interest from LSEs in exploring the possibility of bilateral contracts between LSEs and Tier 1 REC generators. This interest from LSEs may increase as the compliance obligation grows.

The approach proposed in the Petition negatively affects this nascent market in two ways.

First, LSEs would lose any incentive to procure Tier 1 RECs from a seller other than NYSERDA if they were simply obligated to buy whatever amount of RECs that NYSERDA had to sell, using a load-ratio share. Second, because an LSE would, under the proposed re-structured CES, not know either the number of RECs they would need to procure over time, nor the price at which NYSERDA will be selling those RECs over time, they will not be able to determine whether a long-term contract with a Tier 1 REC generator would be advantageous.

The first issue could be addressed. That is, LSEs could still be able to meet a portion of their REC procurement obligation by buying Tier 1 eligible RECs directly from generators. If an LSE enters into a long-term contract with a renewable energy generator to purchase RECs that are Tier 1 eligible, then the LSE should get "credit" for that and have their resulting NYSERDA procurement obligation reduced accordingly, so that they would still have an incentive to enter into those types of long-term bilateral contracts with new renewable generators. The calculation of their ratio load share for purposes of determining how much of the cost of NYSERDA Tier 1

procurements the LSE should bear should be reduced by the amount (of power or RECs) that they buy through a bilateral contract.

To reiterate, NYSERDA's Load Share Obligation construct should continue to permit the self-supply of RECs directly from Tier 1 eligible projects and ensure that LSE procurement of this type will help them meet a REC obligation. Preserving the option for an alternate market for Tier 1 REC procurement will encourage competition amongst the developers of Tier 1 projects and will also allow for alternative contracting structures that may emerge as the NYISO markets continue to evolve to reflect the changing generation and load mix resulting from a transition to a 70 X 30 grid. Further, certain jurisdictional LSE's have entered into such self-supply REC transactions, the treatment of which is not apparent in this NYSERDA proposal.

We acknowledge that NYSERDA has been and will likely remain the most dominant source of market demand in New York, and that long-term bilateral contracts between LSEs and generators have been relatively rare. However, it is possible that the uncertainty for LSEs regarding the price of RECs that NYSERDA will be selling (due to the Index REC structure, for example) may motivate some LSEs to hedge a portion of that risk by entering into a long-term bilateral contract. To preserve that option, an LSEs that makes this choice should have their REC purchase obligation reduced accordingly.

The second issue is harder to address in the structure that NYSERDA has proposed. That is, without knowing what percentage of their load needs to be renewable on a multi-year schedule, an LSE would very likely not pursue a multi-year contract directly with a renewable generator, since there would be risk that they would procure (through that bilateral contract) more RECs than they would need to meet the NYSERDA obligation. If the Commission chooses to pursue the CES re-design described in the Petition, this problem will need to be addressed.

### **C) Concern About Impact to the Voluntary Market in New York**

Our secondary concern is about the voluntary market. While NYSERDA selling Tier 1 RECs to the voluntary market may be consistent with New York's policy goals with respect to renewables deployment, it will likely limit the ability of renewable energy generators to find direct buyers of their RECs in the voluntary market. Indeed, for renewable energy generating projects without NYSERDA contracts, these voluntary buyers could otherwise offer the opportunity to structure distinct contracts with the off-takers directly, provide flexibility and encourage competition in the voluntary market in New York. If generators cannot participate in the voluntary market in New York, they may look to sell RECs outside of New York, which would deter the State from meeting the goals of the CLCPA.

Energy Service Companies ("ESCOs") and Community Choice Aggregation ("CCAs") in New York hold some promise for the voluntary market to develop, and renewable energy generators in New York have been pursuing deals with ESCOs and CCAs. We urge the Commission to consider

ways to maintain this class of potential voluntary buyers as a market for renewable energy generators.

Voluntary buyers may select projects by considering factors such as proximity to their physical load, commitments made by a project in service of a local community, to enhance local economic development, and to select a certain delivered energy shape, in addition to the cost of the REC provided. This flexibility should still exist for REC buyers who are procuring outside of, or in addition to, a legislative and regulatory obligation.

We also remain concerned generally about the way voluntary RECs are treated as it relates to additionality. Often, entities purchasing renewable energy on a voluntary basis do so to increase the total amount of renewable energy in the market, *i.e.*, they want their voluntary actions to drive renewables development and emissions reductions beyond what the compliance market requires. Given the proposed revised structure for Tier 1, it does not appear that voluntary purchases would have this impact, and will simply reduce the size of the LSE obligation. This will discourage some potential buyers from participating in the voluntary market. Moreover, for those entities choosing the annual presale option, either because they do not want to or cannot commit to a long-term contract, the uncertainty in the availability of RECs from year to year may impact their ability to meet their goals, and may also discourage participation. While we appreciate the desire of NYSERDA and the Commission to leverage the voluntary market to help meet CES goals and mitigate compliance costs, we are uncertain if the proposed approach will have the desired impact. Therefore, we recommend that NYSERDA's entry to the voluntary market should only be allowed if the divergence tests show that New York is on track to meet its climate objectives.

#### **D) Support for Tier 2 Resources**

A related concern is Tier 2 resources. These resources are currently not compensated for their renewable energy attributes in New York, although they are counted towards the State's 70% by 2030 mandate. NYSERDA's Competitive Tier 2 Program was short-term and ultimately unsuccessful. As ACE NY recently described in a response<sup>2</sup> to NYSERDA's 2022 Tier 2 Request for Information, maintaining this baseline of renewable energy generators is an unresolved problem in New York's CES.

In those Comments, ACE NY reiterated that maintaining the current fleet of pre-2015 renewables is important for the achievement of the CLCPA goals, as all the assessments conducted in the Clean Energy Standard proceeding at the Commission, including the modelling of necessary NYSERDA procurement levels under Tier 1, assumed that New York would maintain the baseline

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<sup>2</sup> Letter to NYSERDA in response to the agency's 2022 Tier 2 Request For Information, submitted by ACE NY, January 20, 2023.

[https://static1.squarespace.com/static/61c4c9f853c27d1232fffc7a/t/63cec295edf81f121d811021/1674494613909/ACE+NY+Comment+Letter+to+NYSERDA+on+2022+Tier+2+RFI\\_01202023.pdf](https://static1.squarespace.com/static/61c4c9f853c27d1232fffc7a/t/63cec295edf81f121d811021/1674494613909/ACE+NY+Comment+Letter+to+NYSERDA+on+2022+Tier+2+RFI_01202023.pdf)

of pre-2015 renewable generators. Therefore, NYSERDA does need to monitor the baseline and take action should it be eroding.

Our concern is that this Petition, by virtue of NYSERDA dominating the voluntary REC sales market (but not itself purchasing Tier 2 RECs) is removing one of the remaining in-state market options for these generators. We respectfully inquire if NYSERDA has assessed how these resources would be affected by this Petition.

#### **E) Interaction with the Distributed Renewables Market Segment**

The Petition addresses several issues with respect to the distributed renewables market and the treatment of projects that are compensated under the Value of Distributed Energy Resources (“VDER”) Program. Our understanding is that NYSERDA is proposing to buy all the RECs procured by utilities through the VDER program and re-sell them back to LSEs on a load-ratio basis. Because VDER projects will still be compensated for their E-value by the interconnecting utility, or not, in the (likely rare) cases if the customer decides to retain and retire the RECs, we are generally supportive of this approach. It maintains the important incentive for the utilities to be as welcoming as possible to VDER projects.

Our main complaint about this approach is that pre-existing renewables do not receive the E-value. This position is laid out in the *Petition of Interested Hydroelectric Parties Eligibility for Environmental Value Compensation for Pre-2015 Resources Under the Value of Distributed Energy Resources Tariff* filed on May 26, 2022 (in Case 15-E-0751)<sup>3</sup> and in the ACE NY et al letter of support<sup>4</sup> for the petition. Eligibility for E-Value under VDER is an important element of a stable future hydroelectric industry. The smallest facilities often have both the highest revenue needs per megawatt-hour and the greatest local benefits in terms of property taxes, provision of baseline renewables, and flood control. NY ratepayers should have the ability to support and benefit from these local resources. A Tier 2 program which provides enough support for the smallest resources may overpay others, while a competitive program will leave the smallest resources out. Resources which have the highest revenue needs can justifiably be required to pursue more community-focused business model. In addition to these reasons, small hydroelectric plants provide the same environmental benefits as distributed solar and thus should be eligible to receive the E-value.

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<sup>3</sup> Petition of Interested Hydroelectric Parties Eligibility for Environmental Value Compensation for Pre-2015 Resources Under the Value of Distributed Energy Resources Tariff filed on May 26, 2022 in Case 15-E-0751. <https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=287723&MatterSeq=49770>

<sup>4</sup> ACE NY et al letter of support for May 26,2022 Petition of Interested Hydroelectric Parties Eligibility for Environmental Value Compensation for Pre-2015 Resources Under the Value of Distributed Energy Resources Tariff <https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=292497&MatterSeq=49770>



## IV. Conclusion

ACE NY and United appreciate the Commission's consideration of these comments and look forward to our continued involvement in these important decisions regarding the structure of New York's Clean Energy Standard.