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October 2, 2019

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York Public Service Commission
Empire State Plaza, Agency Building 3
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

Initial Comments of Shell Energy North America (US), L.P. and Shell New Energies Addressing Petition To Change REC Structure

Dear Secretary Burgess:

In accordance with the notice issued in the above-referenced proceeding on August 8, 2019, enclosed are the Initial Comments of Shell Energy North America (US), L.P. and Shell New Energies Addressing Petition To Change REC Structure.

If you have any questions, please contact me.

GREENBERG TRAURIG, LLP

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BEFORE THE
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 SHELL ENERGY NORTH AMERICA (US), L.P. AND SHELL NEW ENERGIES ADDRESSING PETITION TO CHANGE REC STRUCTURE

On July 18, 2019, Governor Andrew Cuomo signed into law New York's groundbreaking legislation, the Climate Leadership and Community Protection Act, substantially expanding the State's commitment to combat the adverse impacts of climate change on New York's citizens.[1] Specifically, the CLCPA mandates, *inter alia*, that 70% of all energy consumed in New York State by 2030 must be produced by renewable resources, a commitment that marks a 20% increase over past levels adopted by the Commission which must be accomplished within the same, previously identified time frame. Thereafter, on August 8, 2019, the Commission issued a notice seeking comments on the petition jointly filed by the American Wind Energy Association and the Alliance for Clean Energy New York in March, 2019.[2] The REC Petition focused on the NYISO's carbon pricing proposal and requested that the Commission replace the currently applicable renewable

[1] *See* New York State Climate Leadership and Community Protection Act, S.B. 6599, 2019 Leg., 242nd Sess. (N.Y. 2019) (codified as Ch. 106, L. 2019) (hereinafter, "CLCPA").

[2] *See* NYPSC Case 15-E-0302, *et al.*, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, "Notice Soliciting Comments" (issued August 8, 2019) (hereinafter, "CES Proceeding" and "REC Notice," respectively). In its order implementing the clean energy standard program ("CES Program"), the Commission established that 50% of the energy consumed in New York State would be generated by renewable resources by 2030. (*See* NYPSC Case 15-E-0302, *supra*, Order Adopting a Clean Energy Standard (issued and effective August 1, 2016) (hereinafter, "CES Order"). The CES Program is composed of two components, the renewable energy standard ("RES") applicable to the renewable resources identified by the Commission in the CES Order and the zero emission credit program applicable to nuclear generating facilities. The New York Energy Research & Development Authority ("NYSERDA"), which administered the State's renewable portfolio standard ("RPS") program at the time, was named the administrator of both components of the CES Program.

energy credit procurement mechanism ("REC") for the RES component of its CES Program with a new indexed renewable energy credit procurement mechanism ("Indexed REC").[3] As the Commission considers this request, Shell Energy North America (US), L.P. and Shell New Energies (collectively, "Shell") submit that the far-reaching ramifications of the CLCPA must be taken into consideration before any determination can reasonably be made concerning the REC structure for the RES component of the CES Program going forward.

The CLCPA indisputably requires New York State to rethink its climate change initiatives and reset the trajectory for the build-out of its renewable programs. Depending upon the implementation plans that are chosen, its scope could eclipse past Commission public policy initiatives. Shell submits these comments urging the Commission to assess the REC structure in a post-CLCPA environment. As it does so, Shell notes the Commission has, to date, recognized the important benefits competitive markets have produced for the State, a structure that has proven to foster innovation while shifting financial risk away from consumers. In undertaking this review, Shell respectfully urges the Commission to work with stakeholders while the Climate Action Council is formed and begins its work to be in the best position to consider REC options in light of the enactment of the CLCPA while continuing its longstanding commitment to competitive markets.

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[3] *See* NYPSC Case 15-E-0302, *supra*, *et al.*, "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, "REC Petition"). Responding to a pleading submitted in the CES Proceeding raising concerns that the New York Independent System Operator, Inc's ("NYISO") carbon pricing proposal could result in some renewable resources receiving double payments, the petitioners, collectively referred to herein as "REC Petitioners," asserted that the Commission should address these concerns by adopting an Indexed REC for the RES component of the CES Program.

I. Background

In its CES Order, the Commission established New York must take immediate steps to combat climate change.[4] Characterizing its 50x30 renewable energy procurement as ambitious and recognizing its successful implementation would require a far faster pace of development than its existing renewable program, the Commission determined some form of long-term procurement was needed to support this program.[5] However, rejecting calls to direct the utilities to enter into power purchase agreements or to revert back to the days of utility-owned generation due, in part, to the fact that both mechanisms unnecessarily shifted financial risk back on consumers, the Commission reaffirmed its "...policy of relying on markets where feasible, as the best long-run approach to reducing costs and promoting innovation" and adopted a fixed per kWh payment for the REC structure.[6]

Noting offshore wind development presented a unique set of circumstances given its nascent state and its higher costs and more extensive and complex siting issues, the Commission also found a different structure to compensate offshore wind ("OSW") resources for their carbon-free attributes may be warranted.[7] Focusing on the findings in a report issued by NYSERDA setting forth the numerous economic, environmental and public policy reasons to develop OSW resources in New York as soon as possible, the Commission issued an order last year directing the

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[4] *See* CES Order at 4.

[5] *Id.* at 7, 99.

[6] *Id.* at 101-02 (noting the current fixed price per kWh approach used in the RPS program would be applied to the REC component of the CES Program to "provide a simple transition from the RPS program into the RES" with more developers expected to participate because, unlike the RPS program, the RES program would not be budget-bounded). The Tier 1 REC program was available to the same set of renewable resources that had been permitted to participate in the RPS program.

[7] *Id.* at 103 (establishing implementation of the appropriate next steps to address OSW resources would await the results of a study underway by NYSERDA and requesting that NYSERDA recommend the best solutions for maximizing the potential for OSW buildout in New York).

establishment of a separate OSW solicitation process to "provide for the swift implementation of the Phase I procurements for 2018 and 2019."[8] In its OSW Order, the Commission found the nascent state of the OSW industry and the need for a more defined incentive structure to jumpstart that the OSW program supported implementation of a hybrid OREC procurement mechanism for OSW generation as a core component of the OSW structure which would be composed of the existing RES program's fixed REC and a REC indexed to the market clearing price.[9]

Notably, when the Commission issued the CES Order, it emphasized "a balance is needed between long-run reliance on markets and the need to achieve consistent and measured progress toward the 2030 goal."[10] The Commission thus cautioned that the pace of renewable development would be closely monitored and alternative procurement approaches would be considered if progress lagged behind the CES Program's 50x30 target.[11]

Shortly following the implementation of the CES Program, the NYISO began to develop its carbon pricing proposal.[12] Rather than choosing specific resources which are then given

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[8] *See* NYPSC Case 18-E-0071, *In the Matter of Offshore Wind Energy*, Order Establishing Offshore Wind Standard and Framework for Phase I Procurement (issued and effective July 12, 2018) (hereinafter, "OSW Proceeding" and "OSW Order," respectively) at 28. NYSERDA was also named the administrator of the OSW Program. As originally proposed, 400 MW would be procured in 2018 and again in 2019 for a total of 800 MW in Phase I of the OSW Program. However, due to timing considerations, NYSERDA ultimately issued a Phase I solicitation seeking bids for at least 800 MW of OSW generation in 2019. The Phase I OSW awards were announced on the same day the CLCPA was enacted.

[9] *Id.* at 28, 38-39 (finding "the financial risk involved in developing offshore wind in its early stages indicates that some form of adjustable future revenue streams may be appropriate" and "[t]he unique characteristics of offshore wind warrants additional consideration of the procurement approach.") While the Commission adopted this hybrid approach, the Commission noted that developers would be permitted to submit fixed REC bids only and the hybrid bids would be weighting, emphasizing, "Ultimately, the balancing of various risks and rewards is a business judgement, and the most successful strategy will be one that enables bidders to optimize their bids based on their own perceptions of potential risks and rewards."). (*Id.* at 39-40.)

[10] *See* CES Order at 102.

[11] *Id.* (establishing the effectiveness of the REC approach would be evaluated through a triennial review process and identifying the review criteria to be used).

[12] *See* New York Independent System Operator, Inc., "Proposed 2017 Project Integrating Public Policy" (presented at August 17, 2016 Business Issues Committee meeting), available at https://www.nyiso.com/documents/20142/1406577/agenda%204%20Public%20Policy%20and%20NYISO%20Markets.pdf/7ad10177-4b77-1af5-5c86-5554258359f8.

attribute payments under contract, the NYISO proposal is designed to include the social cost of carbon in the energy market clearing prices themselves. Through this approach, the value of carbon-free emissions is monetized in the market structure.[13]

During the development of the carbon pricing proposal in the NYISO's stakeholder process, end use consumer parties raised the concern that renewable resources that had already received RPS or REC contracts from NYSERDA would receive a double payment when the social cost of carbon was incorporated in the market clearing prices. To address this concern, trade associations representing large consumers and generators filed a petition in the above-captioned case asking the Commission to prevent such double payments.[14] In response thereto, the REC Petitioners filed the REC Petition asserting that the Commission should move to an Indexed REC for the RES to accommodate the NYISO's carbon pricing proposal.[15] The REC Petition preceded the CLCPA's enactment by several months.

Through its affiliates, Shell is investing in energy innovation to support new renewable technologies. Having first entered the land-based wind industry in the United States in 2001, Shell brings extensive experience in wind generation.[16] Most recently, Shell New Energies entered into partnerships with two companies to develop, own and operate OSW facilities using their acquired

[13] *See* New York Independent System Operator, Inc., "Carbon Pricing – Market Design Complete" (presented at June 20, 2019 Business Issues Committee meeting), available at https://www.nyiso.com/documents/20142/7129597/6.20.2019_MIWG_Carbon_Pricing_MDC_FINAL.pdf/cf67ebb8-d0fc-7b4b-100f-c3756d6afae8.

[14] *See* NYPSC Case 15-E-0302, *supra, et. al.*, "Petition of Multiple Intervenors and Independent Power Producers of New York for Relief to Protect Consumers and the State's Competitive Wholesale Electricity Markets from Potential Double-Payments for the Same Attribute" (dated July 9, 2018).

[15] *See* REC Petition at 10 (asserting adopting the Indexed REC would "diffuse the dispute" because "when the carbon price causes wholesale energy prices to rise, the value of the REC would go down, on average, by a commensurate amount" such that the carbon component of the wholesale energy price and the REC value would offset each other).

[16] Shell has owned six land-based wind projects in North America, one offshore farm in Europe and a stake in the Blauwwind Consortium which will build and operate two wind farms totaling 680 MW off the Dutch coast.

BOEM OSW leasehold interests off the coast of Massachusetts and New Jersey.[17] The New Jersey partnership submitted bids to supply electricity to New York in the first NYSERDA OSW solicitation.[18]

As part of its longstanding and significant presence in the electric markets in New York, Shell has closely monitored actions involving carbon pricing and has focused on the impacts of the State's public policy programs on New York's competitive markets. Shell submitted comments in the Commission's OSW Proceeding and submits these comments in response to the REC Notice to highlight key considerations that must be addressed in the near term to meaningfully assess the REC structure that should be utilized in a post-CLCPA world.[19]

II. Comments

The Commission Should Continue the Separate OSW Program and Assess the REC Structure That Should Be Utilized for the RES Component of the CES Program As New York State Moves Forward with the Implementation of the CLCPA

In its petition filed before the CLCPA was enacted, the REC Petitioners cited arguments made about potential double payments under the NYISO's carbon pricing proposal to support their position that the Commission should extend the opportunity to utilize an Indexed REC from the OSW Program to the entire RES component of the CES Program.[20] In the REC Notice, the Commission did not reference the NYISO's carbon pricing proposal but instead sought input more

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[17] *See* Bloomberg News, "A $ 1M Bet on Offshore New Jersey Wind is Finally Paying Off" (dated February 1, 2019).

[18] *See* New York State Energy Research and Development Authority, Offshore Wind-2018 Solicitation, available at https://www.nyserda.ny.gov/All-Programs/Programs/Offshore-Wind/Offshore-Wind-Solicitations/Generators-and-Developers/2018-Solicitation (identifying eight alternative proposals submitted by Atlantic Shores Offshore Wind LLC, a joint venture of EDF Renewables North America and Shell New Energies (US).)

[19] *See* NYPSC Case 18-E-0071, *supra*, "Comments of Shell Energy North America (US), L.P. and Shell New Energies Addressing New York Offshore Wind Generation Program" (dated June 4, 2018). In its OSW comments, Shell highlighted the challenges uniquely faced by OSW resources and urged the Commission to implement a forward OREC structure for OSW generators to meet the State's need for swift development of these resources while at the same time limiting the risk borne by consumers as pertained to OSW contracts. (*Id.* at 6-9.)

[20] *See* REC Petition at 10-12.

generally on whether adopting an Indexed REC within the REC structure for the entire RES component of the CES Program would be an appropriate pathway to address market design issues.[21] To that end, the Commission raised a number of other issues including "design considerations necessary to maintain appropriate market signals and an appropriate balance of risk between developers and ratepayers."[22]

As the Commission considers the issues that were presented by the REC Petitioners, it must take into account the fact that there is no market-based carbon pricing program in New York today. The NYISO has advised stakeholders that it will not move forward with its carbon pricing proposal absent State support in some form. No such support has been offered to date nor has there been any indication it would be forthcoming any time in the near future.[23] Even with implementation of the NYISO's carbon pricing proposal, extending the Indexed REC option to additional renewable resources is not the sole option.[24]

Shell believes that the scope and timing of the CLCPA's 70x30 mandate warrant stepping back and evaluating the REC structure to best meet New York's carbon goals in a post-CLCPA

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[21] *See* REC Notice at 2-3.

[22] *Id.* at 3-4.

[23] Shell supports the concepts underlying the NYISO's carbon pricing proposal as the most efficient mechanism to address most of the State's renewable energy goals in the interim as the State assesses how best to address carbon issues economy-wide. The NYISO has advised Market Participants that it will go forward with the first step of its design efforts for its carbon pricing proposal, known as the functional requirements stage, and it will be able to implement a carbon pricing program within 18 months of a stakeholder vote if its proposal is approved by FERC. When the Commission approved the OSW Program, it recognized OSW resources "...will be substantially more expensive than onshore wind in its early stages, due to the more challenging engineering involved and the local supply-chain economics," and thus, "[i]t is unlikely to win an RES procurement in the near future." (*See* OSW Order at 16.) Thus, while it may well prove necessary to continue the separate OSW program on a parallel track for some extended period of time, particularly given the CLCPA's mandate to procure 9,000 MW of OSW generation by 2035, implementation of the NYISO's carbon pricing proposal in July, 2021 could provide the State with important information concerning the design of future REC solicitations pending the Commission's issuance of a plan to implement the CLCPA generation provisions and the State's efforts to address carbon economy-wide.

[24] For example, as was discussed at length during NYISO stakeholder meetings and established in comments previously provided to the Commission, the Commission also could direct that future REC contracts must include a mechanism to deduct the carbon component of energy clearing prices from REC payments if the NYISO's carbon pricing proposal is implemented.

setting. Shell further submits that all of these considerations should be assessed in the context of the role competitive markets can play in meeting those goals. Participation in NYSERDA's REC solicitations has been robust. The costs of mature renewable technologies, like land-based wind and utility-scale solar, are decreasing allowing them to be more competitive. While it may make sense to develop a REC structure that can accommodate carbon pricing concepts, it seems premature to develop a mechanism that may not be relevant or effective once the contours of CLCPA are known.

Most importantly, as the Commission considers whether it should retain the existing REC structure unchanged or adopt some hybrid form to account for the CLCPA's effects, Shell submits that it is now more important than ever for the Commission to keep its core CES determinations unchanged. To ensure sufficient merchant response, utility-owned generation must continue to be proscribed. To implement the ambitious goals the State has, it will take an amount of capital that far exceeds investments made to date. The Commission must take care to avoid actions, such as restoring utility ownership of generation, or it will close out needed investment signal that is required to implement a market-based system that shifts risks to developers. In other words, decisions made now could reduce or force investment from the market. In contrast, given the limited renewable development opportunities available in Southeastern New York, the unique benefits that OSW generation can bring to New York and the need to continue to carefully shepherd OSW development in New York State, OSW procurement should continue to be a separate and distinct program.[25] Thus, on both fronts, the Commission should stay the course.

[25] In adopting the OSW Program, the Commission identified a number of factors that supported immediate action to develop OSW resources, including its higher costs, the need for extensive infrastructure such as local waterfront facilities, competition from other States seeking to advance their own OSW efforts and the need to build a low-carbon energy system as soon as feasible. (*See* OSW Order at 16-17.) The CLCPA's express directive requiring the installation of 9,000 MW of OSW resources by 2035 embodies these considerations which remain pertinent today and which require the continuation of a focused and distinct OSW effort.

It is also critical for the Commission to remain wed to its commitment to structure its programs in a manner that is consistent with competitive markets because they are, as the Commission has recognized, "the best long run approach to reducing consumer costs and promoting innovation."[26] As was the case when the Commission implemented the CES Program and further augmented it in the OSW Proceeding, maintaining a design that carefully balances the financial risk borne by consumers and developers must also remain paramount. Thus, Shell recommends an expedited technical conference to more fully consider the long-term implications of a REC structure.

Moreover, Shell notes that the Commission has highlighted the need for parties to identify design considerations necessary to maintain appropriate price signals. The REC Notice then identifies a significant number of design questions. Answering these questions in the context of a post-CLCPA world warrants further discussion and careful consideration. Here, too, a technical conference would prove beneficial. When faced with various options, an uncharted area and the need to expeditiously move forward with the OSW program to provide renewable energy in Southeastern New York effectively, the Commission held a technical conference in the OSW Proceeding to address the issues specific to designing a procurement mechanism to successfully implement the OSW program.[27] As the Climate Action Council is formed and undertakes its responsibilities under the CLCPA, a technical conference held in the near term to weigh the impacts of the CLCPA on the efficacy of the RES program would likewise provide all parties with the opportunity to effectively address the issues the Commission has raised in its REC Notice in a timely manner.

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[26] *See* CES Order at 102.

[27] *See* OSW Order at 3-4 & n.40.

Taking this initial step on the front end before many parties embark on implementing the CLCPA will allow the Commission to more effectively align the issues presented by the CLCPA with the options for a REC mechanism going forward. By scheduling a technical conference in the near term, it is also likely to provide a firm foundation as the Commission reviews the efficacy of the CES Program since its inception and as the Climate Action Council and the Commission undertake their respective obligations under the CLCPA.

III. Conclusion

For the foregoing reasons, Shell respectfully urges the Commission to undergo a review of the REC structure in light of the CLCPA's implementation while maintaining its commitment to the ongoing development of New York's competitive markets.

Dated: October 2, 2019
Albany, New York

Respectfully submitted,

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