



**Department of
Public Service**



NYSERDA

Case 15-E-0302

Clean Energy Standard

Phase I Implementation Plan Proposal

Submitted by

Staff of the New York State Energy Research and Development Authority

and

Staff of the New York State Department of Public Service

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1. Introduction

On August 1, 2016, the Public Service Commission issued an Order Adopting a Clean Energy Standard (CES Order).¹ The Clean Energy Standard (CES) is consistent with the State Energy goal that 50% of the electricity consumed by New Yorkers is to be generated by renewable sources by 2030 as part of a strategy to reduce statewide greenhouse gas emissions by 40% by 2030. The CES is divided into a Renewable Energy Standard (RES) and a Zero-Emissions Credit (ZEC) requirement. The RES consists of a Tier 1 obligation on every load serving entity (LSE) to serve their retail customers by procuring new renewable resources, evidenced by the procurement of qualifying Renewable Energy Credits (RECs) or through Alternative Compliance Payments (ACPs). The RES also includes a Tier 2 maintenance program with the purpose to provide support to those “at risk” eligible facilities which, if not for the support, are demonstrated to be economically inviable. The ZEC requirement consists of an obligation that LSEs purchase ZECs from NYSERDA in amounts proportionate to load served.

The CES Order indicates that a series of Commission actions in successive orders will be necessary to fully implement the CES. As part of the implementation phase, in order to continue implementation of the requirements of the CES Order for its launch in 2017, Department of Public Service Staff (Staff) and the New York State Energy Research and Development Authority (NYSERDA) hereby propose the following details and processes with regard to RES Eligibility, Certification, Long Term Procurement for RECs, LSE Demonstration of Compliance and other Reporting Requirements.

2. Eligibility of RES Resources

NYSERDA will be responsible for implementing many aspects of Tier 1, including eligibility determinations, and the maintenance of a CES web interface with all information necessary for RES resources, obligated LSEs, and other market participants to understand what is expected and required of them. Participating RES facilities will be responsible for understanding RES eligibility criteria and compliance requirements, and for maintaining RES certifications in good standing.

2.1. Tier 1 Eligibility

a. Resource Eligibility

Per the CES Order, resources eligible to provide Tier 1 LSE compliance will mirror the eligibility rules currently used for the Main Tier of the Renewable Portfolio Standard (RPS), with the exception that the former 30 MW limit on low-impact run-of-river hydroelectric facilities is eliminated. The eligible resource categories will include Biogas, Biomass, Liquid Biofuels, Fuel Cells, Hydroelectric, Solar, Tidal/Ocean, and Wind. More detailed requirements as to eligibility of these resources were contained in Appendix A of the CES Order.

i. Distributed Energy Resources

The treatment of the environmental attributes generated by distributed energy resources (DER) is the subject of an ongoing proceeding (Case 15-E-0751) before the Public Service Commission and also a

¹ Case 15-E-0302, Proceeding to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting A Clean Energy Standard (issued August 1, 2016).

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request for clarification filed by NYSERDA on August 25, 2016.² A staff report and recommendation on this topic was filed on October 27, 2016 for public comment.³ Commission action taken in response to this report may impact elements of the ultimate RES implementation such as DER eligibility for long term procurement by NYSERDA, overall Tier 1 eligibility of these resources, Tier 1 REC claims and ownership, and settlement.

In order to ensure that the generation data associated with DER is properly recorded in the New York Generation Attribute Tracking System (NYGATS) for the purpose of RES reporting, electric distribution companies must report project registration information and actual or estimated generation data to NYGATS for all DER installed in their service territory and provide necessary data to determine the proper treatment of the NYGATS certificates or RECs associated with each DER generation project. In addition, the EDC's must report monthly generation associated with load modifiers in their territory for the purpose of NYGATS tracking and settlement (see Compliance Reporting, below).

b. Vintage

New generators that comply with the technologies listed in Appendix A of the CES Order will be eligible for Tier 1 of the RES program if the first date of commercial operation of the generation facility occurs on or after January 1, 2015 (the "Threshold Eligibility Date" or "TED"). Notwithstanding the TED, under certain circumstances, all or a portion of the energy production from eligible generation sources with first date of commercial operation prior to January 1, 2015 ("Vintage Generation Facility" or "VGF") will be eligible under the following conditions.

i. Upgrades

The incremental generation from an upgraded VGF will be considered eligible for the Tier 1. Only the incremental output over the historic generation baseline of an upgraded VGF will be eligible to meet the Tier 1 RES LSE obligation. The historic generation baseline of an upgraded generation facility will be measured as the average annual electrical production from the generation facility in MWhs, for the three (3) calendar years prior to the TED, 2012 to 2014, or for the first 36 months after the commercial operation date if that date is after January 1, 2012.

To be qualified as an upgraded generation facility, a VGF will need to demonstrate to NYSERDA that a material capital investment in equipment or facilities has been made to the generation facility on or after January 1, 2015, other than expenditures for routine operations, maintenance and/or repair. Further, the generation facility will need to demonstrate that such investment directly results in one of the following conditions:

- 1) A material increase in the efficiency of its generation process, resulting in an increase in annual energy production of at least five percent (5%) under normal operating conditions and normal resource availability, relative to the weather-normalized annual energy production prior to the upgrade; or
- 2) An increase to generator's nameplate capacity of at least ten percent (10%) also resulting in a minimum five percent (5%) increase in annual energy production under normal operating

² Case 15-E-0302, Petition (filed August 25, 2016).

³ Case 15-E-0751, Staff Report and Recommendations in the Value of Distributed Energy Resources Proceeding (filed October 27, 2016).

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conditions and normal resource availability, relative to the weather-normalized annual energy production prior to the upgrade.

This provision is not intended to allow for generation from any of the following circumstances to qualify: (i) an unusually high resource period (i.e., a high hydro year); (ii) increased output resulting from a change in generator economics (i.e., an increase on the dispatch of a biomass plant); or (iii) increased output as a result of increased expenditures on operations or maintenance resulting solely in increased availability.

A VGF may file a request to be certified as an upgraded generation unit following standard certification filing requirements, supplemented by information specifying and supporting the historic generation baseline, describing the investment, and including an independent engineer's report (and if applicable, independent meteorologist report) describing and certifying the expected resultant increase in production over the Historic Generation Baseline and if applicable, increased capacity.

ii. Return to Service

The entire output of a generating facility that does not meet the TED requirements, can qualify as a Return to Service generation unit and be eligible for Tier 1 if the generation facility can demonstrate to NYSERDA that it has not been in commercial operation for at least 48 consecutive months prior to the return to service date upon submission of the certification application.

iii. Repowering

The entire generation from a repowered vintage generator ("Repowered Facility") will be considered eligible for Tier 1 if it can demonstrate that:

- 1) The Prime Mover, as defined in Table 1, has operated for the length of its Useful Life as defined in Table 2; and
- 2) The existing facility's Prime Mover has been completely replaced with a new one, which has been manufactured and installed after January 1, 2015; and
- 3) Such replacement of the Prime Mover, as defined in Table 1, has directly resulted in a material (15 percent (15%) or more) increase in the efficiency of the production of the generation unit; and
- 4) The Repowered Facility is operating at the site of an existing VGF; and
- 5) 80 percent (80%) of the tax basis per Generally Accepted Accounting Principles (GAAP) from the completed Repowered Facility (not including its property and tangible assets) is derived from capital expenditures made on or after January 1, 2015.

Table 1 – Prime Mover Definition

Energy Source	Definition of Prime Mover for Energy Source
Landfill Gas	The entire internal combustion engine or combustion turbine.
Biomass	The entire boiler.
Wind	The entire wind turbine, including the generator, gearbox (if any), nacelle, rotor and blades.
Hydroelectric	The entire turbine and structures supporting the turbine, not necessarily including the building housing the turbine.
Solar PV	The modules and inverters.
Digester gas	The entire digester unit and internal combustion engine or combustion turbine as applicable.

Table 2 – Useful Life by Energy Source

Energy Source	Useful Life (years)
Anaerobic Digestion	20
Biomass/Liquid Biofuel	20
Fuel Cell	20
Hydroelectric	50
Landfill Gas	15
Solar PV	20
Wind	20

iv. Relocated Facilities

A generation facility meeting the following definition of a relocated Tier 1 generation facility (“Relocated Facility”) will be considered eligible for Tier 1 if it can demonstrate that it meets all other eligibility requirements. A generation facility whose Prime Mover (per Table 1, above) was used on or before the TED to generate electrical energy outside of both the New York Independent System Operator (NYISO) Control Area and Control Areas adjacent thereto, and that is relocated into one of said Control Areas after the TED.

2.2. Tier 2 Maintenance Resource Eligibility

a. Resource Eligibility, Capacity and Vintage

The intent of the RES’s Tier 2 Maintenance Resource is to provide support to those “at risk” eligible facilities which, if not for the support, are demonstrated to be economically in-viable without such support. Tier 2 Maintenance Resource eligibility will be applicable only to currently operating run-of-river hydroelectric facilities of 5 MWs or less, wind turbines, and direct combustion biomass facilities that comply with eligible fuel source requirements for Tier 1 eligibility. Facilities must have been in commercial operation prior to January 1, 2003 and the output must have been originally included in New York’s baseline of renewable resources as of that date.

b. Demonstrating Eligibility

To demonstrate that a facility’s renewable energy attributes are sufficiently at risk to merit a Tier 2 Maintenance Resource Contract, the Deputy Director of the Office of Clean Energy (OCE Deputy

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Director) shall examine and consider the following information, as described in Appendix D of the CES Order.

- 1) An examination of relevant portions of the books and records of the facility (including a documented after-tax cash flow forecast) and, to the extent appropriate, of the generation facility owner/operator and any affiliates;
- 2) The basis for and reasonableness of expected operating and capital costs. This evaluation may include, among other things, a comparison to prior years' costs and a comparison to costs of like generation;
- 3) The existence of any other cash sources available to the generation facility, such as: (1) tax benefits, (2) subsidies, (3) contracts, and (4) other sources, including restructuring financing;
- 4) Whether market rules are increasing the costs of the generation facility and, if so, whether any steps can be taken to reduce such costs;
- 5) Whether the generation facility's real property tax assessment is consistent with the assessments imposed in similarly situated facilities elsewhere, and if not, what action has been taken to address such assessment;
- 6) Whether the generation facility is required to operate as part of a package of assets that is financially viable as a whole;
- 7) Whether the generation facility generates enough revenue, based on expected output, to cover its operating costs;
- 8) Whether the generation facility generates enough revenue to make necessary capital improvements;
- 9) Whether the generation facility generates enough revenue to cover its fixed costs, including: (1) debt service, (2) property taxes, (3) security costs, and (4) other costs; and
- 10) Whether the generation facility has attempted to make use of other renewables programs available to it, such as voluntary green markets.

c. Procedures to Obtain Maintenance Resource Contracts

- 1) Any entity seeking Tier 2 maintenance resource eligibility for an RES facility must submit a request to the OCE Deputy Director. The request may be submitted at any time through the duration of the RES Program.
- 2) The request must include the entity's most recent three years' income statements, balance sheets, cash flow statements, and income tax returns related to the facility.
- 3) The request must also identify the type of facility; location; date of commercial operation; list of affiliates; list of contracts; and description of financing arrangements.
- 4) The OCE Deputy Director will review the information within 30 days for compliance with the filing requirements and will notify the applicant of any deficiencies in the filing and how to remedy those deficiencies.
- 5) Once the deficiencies are satisfied, the OCE Deputy Director will issue a Notice of Proposed Rulemaking concerning the request to be published in the State Register pursuant to the requirements of the State Administrative Procedure Act (SAPA).
- 6) After receiving all necessary information to complete the review, the OCE Deputy Director will make a recommendation to the Commission regarding the facility's eligibility for

maintenance resource status, taking into consideration each facility's circumstances and the amount of the assistance required. If eligibility is recommended, the recommendation will include a proposed payment award duration and amount at a level necessary to ensure preservation of the at-risk renewable energy attributes and/or other measures that might be taken and proposed contract terms.

- 7) If the Commission approves a Maintenance contract, it will certify the terms to the NYSERDA for administration of the contract and will also authorize a method of funding.

2.3. Geographic Eligibility and Delivery Requirements

NYGATS certificates associated with the production from an otherwise eligible RES resource may be used to satisfy Tier 1 RES obligations if the RES resource is (1) physically located within the jurisdiction of the NYISO or a control area adjacent to the NYISO and (2) the associated energy is contractually consumed in New York pursuant to a New York delivery requirement. The deliverability requirement best ensures that the resource has the ability to provide supply to New York consumers and impact emissions associated with energy consumption in New York State.

To be eligible under Tier 1, the eligible resource must be one that can and does actually contractually supply energy into the New York market. The electricity associated with the NYGATS certificates used for compliance from RES resources located within New York must either be (i) delivered into a market administered by the NYISO for end-use in New York State, (ii) delivered through a wholesale meter under the control of a utility, public authority or municipal electric company such that it can be measured, and such that consumption within New York State can be tracked and verified by such entity or by the NYISO; or (iii) delivered through a Renewable Energy Resource Dedicated Generation Meter, approved by and subject to independent verification by NYSERDA, to a customer in New York State, should it be deemed eligible.

The electricity associated with the certificates used for compliance from RES resources located in a control area adjacent to the NYISO must be scheduled, transmitted, delivered to and settled in the NYISO energy market in each hour, and be accompanied with documentation of a contract path between the generator's injection point in its control area of origin to the delivery point in New York that, among other things, includes provision of transmission or transmission rights for delivering the generation via the NYISO. In order for imported RECs to be flagged as eligible towards Tier 1 compliance obligations, NYGATS will require that the import schedule for the associated energy provided to NYGATS by the NYISO contain, at a minimum, the following components of the North American Electric Reliability Corporation (NERC) tag: Sending and Receiving Control Areas (CA) and Purchasing/Selling Entity (PSE) Name and Number. Additionally, NYGATS will require an attestation from the importer that the information contained in NYISO schedule is accurate as well as evidence that the imported RECs have been retired in the host control area. The number of RES-eligible RECs minted in the NYGATS from RES generation facilities located in a control area adjacent to the NYISO will be limited to the lesser of the actual output of the generator or what was actually delivered and scheduled into the NYISO. Once delivered into the NYISO by any of these means, the generation must not then be exported to another control area; an attestation will be required to confirm this requirement.

Such electricity must also meet all requirements of the NYGATS pertaining to creating certificates associated with energy imports, as they may be altered from time to time. Further, the imported energy

and creation of and title to the associated certificates must be sufficiently verifiable for purposes of the Environmental Disclosure Program, which requires certificate creation in the host control area's compatible certificate tracking system, which can then be retired in concert with the creation of a corresponding NYGATS certificate. Staff deems the NEPOOL Generation Information System and the PJM Generation Attribute Tracking System to currently meet this requirement. Additionally, certificates issued for imported energy from other adjacent control areas will be deemed eligible if they meet the requirements for external generators that are not registered with a compatible tracking system as defined in the NYGATS Operating Rules.

2.4. Eligibility Rule Changes

A public process will be available for the consideration of amendments to the list of eligible RES Resources, vintage, geographic eligibility or delivery requirements.

a. Commission-Initiated Process

The Commission, on its own motion or upon request from NYSERDA and/or DPS Staff, may initiate a notice and comment process to consider the eligibility of an additional RES resource, the modification or removal of a then-eligible RES resource type or vintage, or modifications to the geographic eligibility or delivery requirements.

b. Stakeholder-Initiated Process

Interested parties may also request the inclusion of a new RES resource as eligible for the RES program or a modification of eligibility requirements for a then-eligible RES resource. The process to make these eligibility determinations will involve a petition being submitted to the Commission in compliance with the Commission's filing requirements, which include service on (i) all parties listed on the Commission's official service list for the CES proceeding, and (ii) the list of all RES-obligated LSEs maintained by the Commission. The Commission's Secretary will have the discretion to extend the comment period that will be provided in accordance with the State Administrative Procedure Act (SAPA), offer an opportunity for reply comments, and/or to schedule a technical conference for the parties to discuss the petition.

The economic interests of the petitioner alone are insufficient grounds for commencing a proceeding in response to an eligibility change petition. Any such petition must provide a rationale for the proposed change as meeting or consistent with one or more of the policy objectives delineated in the CES Order as well as criteria listed below. The Commission may, at its discretion, determine not to initiate a proceeding resulting from such a petition if it fails to meet minimum requirements.

The criteria for evaluating whether an additional or modified resource should be eligible to meet the RES obligation will consist of:

- 1) the extent to which the resource will result in new and incremental renewable energy;
- 2) the origin and composition of the generation fuel (if applicable);
- 3) the nature of the process transforming that fuel into electricity;
- 4) the totality of the environmental and other impacts of the generation process, such as air emissions and waste products;
- 5) the comparability of market access and impact on changing the mix of generation resources consumed in New York;
- 6) the degree of development of the resource and commercial maturity of the technology

- 7) the potential for deleterious impact to uncontracted Tier 1 RES-eligible resources of the proposed modification on REC prices and
- 8) the probable cost impact to ratepayers of providing RES support for that resource.

After the opportunity for comments on the notice expires, the Commission in consultation with NYSERDA and DPS staff will make a decision on the petition and issue an Order that, if applicable, will modify the eligibility requirements outlined here. NYSERDA will update the CES web interface and the CES rules following the issuance of a resulting Order to reflect such changes.

3. Certification of Eligible Tier 1 RES Resources

Certification is a prerequisite to generation facility participation in the RES program as a Tier 1 eligible resource. NYSERDA will perform all services related to the development, review, approval and ongoing validation of RES certification materials. The process will seek to maintain simplicity where possible, and will be robust where necessary to ensure ongoing compliance with RES requirements. In modifying the current RPS Main Tier certification process to support the RES program, successful models and best practices from other states with LSE obligations have been and will be considered, and measures which may prevent a streamlined implementation will be avoided.

The certification application, review and verification processes must be transparent and efficient. Certification applications will be accepted for generation facilities at any time after they become operational, with exceptions for Provisional Certification as described below.

3.1. Certification

NYSERDA will develop a streamlined RES certification process modeled on the RPS Main Tier certification process but adapted to be available on a continuous basis to facilities in commercial operation. NYSERDA will make available on the CES web interface a Certification Application, which will result in issuance by NYSERDA of a Statement of Qualification (SoQ) of RES program Tier 1 eligibility. The application will be used by all RES facilities seeking program eligibility, although some fields may not apply to all technologies. Facilities previously certified and delivering under the Main Tier Renewable Portfolio Standard need not re-apply for certification and will automatically receive a SoQ from NYSERDA to be eligible for the RES, although such Main Tier facilities will not be eligible for Tier 1 RES eligibility if they commenced operation prior to January 1, 2015 or satisfy the VGF requirements.

Facilities located in adjacent control areas will also be required to complete the application process, and will be subject to additional ongoing requirements to demonstrate the delivery of energy and RECs into New York in order to have their NYGATS certificates deemed Tier 1 RES-eligible.

The Certification Application will require each facility to submit materials sufficient to demonstrate its fulfillment of all program eligibility requirements and achievement of commercial operation, as further described below. Generation facilities must only submit the Certification Application after the facility becomes commercially operational and the facility is registered in NYGATS. To the extent possible, information stored in the NYGATS registry will be used to limit duplicative data requirements.

a. Demonstration of Eligibility

Each facility will submit materials sufficient to demonstrate its fulfillment of all program eligibility requirements. Such information will include:

- 1) Contact information;
- 2) Unit name and NYISO/NYGATS identification numbers;
- 3) Nameplate capacity;
- 4) Fuel type;
- 5) First date of commercial operation;
- 6) Control area;
- 7) Street address and navigational coordinates;
- 8) Whether the facility is applying as part of an aggregation;
- 9) Supplemental details that may be required to verify eligibility; and
- 10) If a facility is seeking certification as a VGF, the additional information required of such facilities.

b. Demonstration of Commercial Operation

Each facility will submit materials sufficient to demonstrate that it has been constructed and achieved commercial operation. Such information will include:

- 1) Formal letter declaring the date Commercial Operation has been achieved;
- 2) A third party engineering or vendor commissioning report verifying the facility is fully commissioned and operating;
- 3) Data and information provided to NYSERDA from the NYISO or local utility company verifying the facility is available and capable of producing electricity, or from an internet-enabled electric meter for DER generation;
- 4) For fuel-based facilities such as those burning biomass, the contractor must provide procedures on fuel measurements and maintain detailed recordkeeping on the use of both eligible and ineligible fuels and the energy produced by each fuel category; and
- 5) Any other supplemental information that may be necessary to verify that the facility is operating and consistent with the conditions under which Provisional Certification was granted, if applicable.

Applicants using a biomass fuel must also meet all RES feedstock and verification requirements.

The application process and all necessary instructions will be posted on the CES web interface, and applications will be submitted electronically through the interface. The application process will result in an electronic form, signed by an authorized agent of the prospective participant, and supporting documentation, which is electronically transferred to NYSERDA. At NYSERDA's discretion, selected application materials may be submitted by means other than the website interface.

3.2. Provisional Certification

Provisional Certification affirms that a non-operating generation facility, on the basis of information known at the time of application, could meet the RES eligibility criteria. A generation facility is required to be provisionally certified to participate in a NYSERDA RES long-term contract procurement and be

considered for a contract award thereunder, by the dates specified in the applicable procurement documents. Generation facilities may seek Provisional Certification at their option at any time.

NYSERDA will develop a RES Provisional Certification process modeled on the RPS Main Tier certification process but adapted to be available on a continuous and streamlined basis. NYSERDA will make available on the CES web interface a Provisional Certification application, which will result in issuance by NYSERDA of an electronic approval letter.

For the Provisional Certification application process, all necessary requirements of the Certification Application process above will be followed, with the exception of the “Demonstration of Commercial Operation” section.

The Provisional Certification process will also specify ongoing reporting requirements, which will vary by technology and for out-of-state generators, energy delivery requirements, discussed in the Verification section below.

Customer-Sited facilities may be aggregated for Provisional Certification if they are of the same technology and tier and first reach commercial operation during the same calendar year. The aggregate application must be approved by NYSERDA, subject to the same process as all other facilities.

3.3. Certification Approval Process

Once the Certification and Provisional Applications are posted on the CES web interface, the application and approval process will be continuous; facilities seeking Certification and Provisional Certification will be allowed to submit their applications to NYSERDA at any time. NYSERDA’s review process and the grant or denial of Statements of Qualification will also occur on a rolling basis.

NYSERDA will grant a SoQ or deny Certification, if applicable, within 30 days of the date the Certification Application is determined to be complete. For generation facilities seeking CES Provisional Certification first, NYSERDA will notify the Generator via e-mail whether the Provisional Certification was granted or denied, within 30 days of the date the Provisional Application is determined to be complete. The facilities granted Provisional Certification will then complete the “Demonstration of Commercial Operation” portion of the Certification Application along with any additional information to confirm that the facility was constructed as Provisionally Certified once commercial operation is achieved.

Facilities for which a Certification Application is approved by NYSERDA will be issued a SoQ, which will include a unique certification number for each facility and specify the Tier(s) for which facility has been certified, if applicable. The SoQ will include all information required to identify such facility as qualified for the RES Program in NYGATS. The SoQ will state that NYSERDA will remain entitled, for the duration of certification, to seek such information from the applicant and to perform such investigations as may be required to allow confirmation that the facility continues to operate in accordance with their Certifications. A SoQ is only final when signed by NYSERDA’s authorized representative. A signed SoQ will be provided to the applicant’s designated contact person, and all necessary info will be sent to the NYGATS administrator. Once a SoQ has been issued, NYGATS certificates minted after the SoQ date will be RES-eligible.

NYSERDA will maintain a RES Certified Projects Report listing all Approved Certification Applications to date. This list will include the facility name and location (city & state), contact information, nameplate

capacity, capacity submitted for Certification, resource type, the date on which the application was approved, and the date on which RES-eligible RECs are first produced. Additional information may also be recorded for VGF facilities under the upgrade category related to the portion of a facility's generation deemed eligible based on the historical baseline.

If Certification is denied, then the applicant will be advised of the basis for the denial and may reapply after the identified problems are corrected.

3.4. Verification

For projects seeking Provisional Certification and not yet operating, any information submitted during the application process is subject to verification once the project is complete. Upon commercial operation, such a project will submit its actual installed capacity and commercial operation data for inclusion in the RES SoQ Application and NYGATS record. Once operating, all RES-certified projects will submit information, as required by NYSERDA, which may affect its continued eligibility. Such information will include, but not be limited to: (a) any changes in the facility's authorized representative, owner or operator, (b) any changes in the facility's fuel type, capacity, or other descriptive characteristics, and (c) monthly production, as tracked, verified and reported within the NYGATS. With respect to changes from the information provided in the SoQ Application, such change will be reported to NYSERDA within 30 days.

In addition to these requirements, NYSERDA or persons acting at its behest may conduct audits and/or site visits at NYSERDA's discretion at any time to further assist in verification and ongoing RES compliance. NYSERDA will have sole discretion to determine if any required ongoing information filings are material to the facility's Certification. If a facility is determined to have experienced a material change, then NYSERDA will have the sole discretion to require the facility to be recertified. The recertification will be conducted using the same process as the initial Certification.

For RES-certified facilities located in adjacent control areas, the portion of total output that qualifies for the RES program will meet all applicable program requirements.

For all facilities, NYGATS certificates applied toward NY RES compliance will not be used towards compliance with state renewable energy obligations in any other state or toward any voluntary program or market claim.

3.5. Suspension & Revocation

NYSERDA will have the sole authority to suspend or revoke the RES program certification of facilities that, after notice and an opportunity for hearing: (i) are found to provide false information; (ii) fail to notify NYSERDA in the event of a change in eligibility status; or (iii) who otherwise fail to comply with the RES program rules. When suspending certification, NYSERDA will specify the period of time for which the facility will not produce RES-eligible RECs in the NYGATS. When revoking certification, NYSERDA will specify the period of time that must elapse and the conditions which must be met before the facility may apply for recertification. NYSERDA will notify the NYGATS administrator of the dates associated with any suspension or revocation. NYSERDA will also have the sole authority to specify sanctions associated with suspension, revocation, and other forms of non-compliance.

4. Tier 1 RES Long Term Procurement

As the CES Order identifies, a long-term procurement process for Tier 1 RECs is needed to support the financing of facilities necessary to achieve the 50 by 30 RES goal. Long-term procurement will employ the current RPS Main Tier method of competitively selecting fixed-price REC contracts according to the following modified approach.

4.1. Procurement Structure and Approach

Per the CES Order, at least once per year, NYSERDA will issue a Request for Proposals (“RFP”) for a designated quantity of RES Tier 1 RECs, subject to the parameters described in this section. In the event that supply quantities ultimately procured under such RFP fall short of minimum procurement targets outlined in the CES Order, NYSERDA will conduct a second procurement later that year.

For RES procurements, DPS Staff and NYSERDA propose to incorporate additional factors to the 70% price, 30% economic development scoring that was previously used in Main Tier RPS REC contract solicitations. The primary purpose of these additional factors – which require that participating generation facilities meet a minimal level of maturity – is to maintain robust competition while reducing attrition, thereby increasing the proportion of contracts leading to viable generation facilities, relative to experience under the Main Tier RPS. As required by the CES Order, the following additional factors were considered:

- Viability of the generation facility;
- Time frame for bid acceptance to operation;
- Diversity of resources of the overall portfolio;
- Diversity of owners;
- Alignment with REV goals specified in procurement solicitations;
- Generation facility developer experience; and
- Non-cost economic benefits.

A phased approach to evolving NYSERDA’s historical REC central procurement approach is proposed. The first phase will incorporate adjustments to the criteria and approach for implementation in 2017 that reflect the limited ability of the resource development pipeline to respond on short notice. Over time, DPS Staff and NYSERDA envision that, with more advance notice, it may be possible to establish additional criteria or procurement and evaluation processes to further encourage investment and improve the procurement success rate without overly constraining the competitive playing field.

a. 2017 Procurement Timetable

As required in the CES Order, for the 2017 procurement period, NYSERDA will establish and publish on its CES web interface no later than December 1, 2016, a firm schedule of fixed dates for the annual and potential supplemental solicitations for 2017. No less than one solicitation will be conducted during the first half of 2017. If the solicitation acquires less than the minimum procurement target for 2017 as defined in the CES Order, it will be followed by a second solicitation issued within 2017.

b. NYSERDA REC Purchases

i. Contract Duration

As was the case in the RPS Main Tier program, the maximum contract duration offered by NYSERDA will be 20 years, subject to the useful life of each facility, based on its resource type and defined in Table 3.

Table 3 – Generation Facility Useful Life

Resource	Useful life (years)
Anaerobic Digestion	20
Biomass/Liquid Biofuel	20
Fuel Cell	20
Hydroelectric (New or Upgrade)	50
Landfill Gas to Electricity	15
Solar PV	20
Tidal/Ocean	10
Wind	20

For generation facilities not in commercial operation as of the RFP release date, the maximum contract duration will be calculated as the lesser of:

- 1) 20 years, or
- 2) The generation facility’s useful life.

For generation facilities in Commercial Operation as of the RFP release date, the maximum contract duration will be calculated as the lesser of:

- 1) 20 years (240 months) minus the number of months between the month and year of commercial operation and the procurement release date (rounded to the nearest full year),
or
- 2) The generation facility’s useful life minus the number of months between the month and year of commercial operation and the procurement release date (rounded to the nearest full year).

ii. Expected Commercial Operation Date

In order to increase the likelihood of generation facilities with REC contract awards successfully coming to fruition, NYSERDA and Staff propose to modestly extend the maximum elapsed duration from bid acceptance to the last potential date of commercial operation before triggering contract termination (i.e., the requirement that Bid Facilities must enter commercial operation by the Commercial Operation Milestone Date (COMD), as it may be extended by virtue of posting additional security or entering into an interconnection agreement). In the 11th RPS Main Tier solicitation, the period from issuance of the RFP until the initial COMD was approximately 2 years, with an additional five calendar quarter’s extension possible to the final COMD.

For the RES solicitations, NYSERDA and Staff propose to extend to the maximum elapsed duration until the initial COMD to equal 2 years from the expected award notification date until the initial COMD, and in addition, to modify the ability to extend the COMD to allow for up to four 6 month extensions, each

secured through either posting of additional contract security (as described more fully below) or entering into an interconnection agreement.

In aggregate, these changes provide for a more flexible approach allowing viable generation facilities a more realistic timeframe to achieve commercial operation (in the face of the many development challenges it must face), while creating additional milestones for termination of contracts with generation facilities failing to make sufficient forward progress for its sponsors to place at risk additional contract security funds.

iii. Payment

In order to receive payments, a generation facility must successfully register with NYGATS to create NYGATS Certificates. NYSERDA will make payments for RES-eligible RECs from contracted facilities based on monthly invoicing, once Tier 1-eligible RECs are transferred to NYSERDA's designated account.

NYSERDA will not pay under circumstances where the generation facility has not transferred the associated NYGATS Certificate to NYSERDA's designated account. Further, the creation of Certificates by NYGATS and all payments may be conditioned on the provision to NYSERDA by the generation facility of additional documentation, including but not limited to the generation data and, if appropriate, fuel data/information necessary for NYSERDA to quantify and verify the existence of Tier 1 RECs. For Fuel-Based Bid Facilities, the Generation facility will be required to provide additional information as described in the Biomass Power Guide.⁴

iv. Bid Price

Bidders will be asked to provide one bid price in the form of nominal dollar which represents a single fixed production payment, expressed in dollars per megawatt-hour (\$/MWh), applicable to each NYGATS certificate offered as performance throughout the term of the contract. This price will be the fixed price for each eligible REC over the contract duration.

v. Maximum Acceptable Bid Price Evaluation Metric

NYSERDA will employ a confidential maximum acceptable Bid Price Evaluation Metric, which will be established in consultation with DPS Staff for each solicitation; NYSERDA will not award a contract for a generation facility whose bid yields a Bid Price Evaluation Metric which is above a maximum acceptable Bid Price Evaluation Metric.

4.2. RES Procurement Design

As was the case for the RPS Main Tier solicitations, for RES procurements, Staff and NYSERDA recommend the continuation of a two-step procurement process as described below:

- 1) Step One: Generation facilities are qualified as eligible to participate in a RES solicitation through a threshold review process (including Provisional Certification of Eligible RES Resources and evaluation against other threshold criteria);
- 2) Step Two: Qualified facilities submit binding bid documents for evaluation, ranking, and ultimate award.

⁴ Biomass Power Guide for RPS, <https://www.nyserra.ny.gov/-/media/Files/EDPPP/Energy-and-Environmental-Markets/RPS/RPS-Documents/NYS-RPS-biomass-guidebook.pdf>

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This process is described in more detail below. Future RFPs will be substantially in the form presented here and may be adjusted from time to time.

a. Roles

As defined in the CES Order, NYSERDA will assume the primary responsibility for issuing and executing RES solicitations. NYSERDA staff will execute all Step One eligibility determination activities listed below but will solicit the expertise of a Technical Evaluation Panel (TEP), along with NYSERDA and DPS staff, in the Step Two evaluation process. In competitive procurements for renewable energy supply, it is commonplace in the industry to utilize the expertise of independent evaluators who possess unique proficiency in the evaluation of energy generation projects. Given the criticality and complexity of the Step Two process, NYSERDA and DPS staff will competitively select confidential independent evaluators to serve on the TEP for the Step Two process for each solicitation.

4.3. Step One: Threshold Eligibility Requirements

All generation facilities seeking long-term NYSERDA REC contracts under RES procurements must be generation facilities certified as eligible for RES program Tier 1 which also demonstrate that they have achieved a minimal level of development progress to be considered sufficiently mature to be considered. Threshold maturity requirements are intended to provide a minimal level of confidence in a selected generation facility's ability to reach commercial operation if offered a contract, as well as to minimize the potential for speculative bidding by generation facilities of insufficient substance.

At the highest level, DPS Staff and NYSERDA expect applicants to be able to demonstrate a well-conceived and thoroughly studied generation facility concept, have completed a fatal flaw analysis, have begun key regulatory processes (such as interconnection and permitting), have engaged investors and be fully aware of all of the requirements needed to bring a generation facility to successful completion. This process will be administered by combining the completion of a self-certified checklist with a simultaneous submission of supporting documents that NYSERDA can refer to as necessary to validate the self-certification. The threshold eligibility requirements to be applied to NYSERDA REC procurements are detailed as follows.

a. Resource Type, Location and Vintage

All generation facilities must demonstrate that they meet RES Tier 1 eligibility criteria by securing Provisional Certification (if not under commercial operation) or Certification (if under commercial operation) as a Tier 1 resource prior to submitting a bid (see Certification). A generation facility must be located within New York State or within a control area adjacent to the NYISO while also meeting specified delivery requirements as described in the Eligibility section.

The generation facility must also demonstrate that it meets RES Tier 1 vintage criteria, including first reaching commercial operation on or after January 1, 2015, (the "Threshold Eligibility Date" or TED); or if a vintage generator, (i) be upgraded pursuant to applicable Tier 1 eligibility rules on or after the TED (only incremental generation over the historical generation baseline will be eligible); (ii) return to service pursuant to applicable Tier 1 eligibility rules on or after the TED; or (iii) be repowered pursuant to applicable Tier 1 eligibility rules on or after the TED.

b. Threshold Eligibility Criteria

In order to demonstrate a minimal level of maturity, NYSERDA will establish the following additional threshold criteria which bidders must meet to be considered for a Tier 1 REC contract.

i. Interconnection

Generation facilities of different types, sizes and interconnection voltages will be subject to different interconnection requirements, and navigating the interconnection process involves a range of timelines and application processes. Of key importance is the time required to complete the appropriate review processes. For very small generation facilities, approval may be secured relatively quickly, while the time required for large generation facilities to secure interconnection certainty may be measured in years. DPS Staff and NYSERDA's proposed threshold requirements recognize these differences.

In many circumstances, it is not possible for developers to know for certain which interconnecting jurisdiction their project will be subject to without input from NYISO or the New York Transmission owners (NYTOs), because of the complexities of clearly delineating between FERC and non-FERC jurisdictional assets. There are no absolute rules, for example, based on line voltages. In all cases, NYSERDA expects applicants to demonstrate that they understand their project's specific interconnection requirements.

As defined in the NYISO tariff, a generation facility larger than 20 MW proposing to interconnect to the New York State Transmission System or Distribution System will be subject to the Large Generator Interconnection Process requirements for a valid interconnection request set forth in Section 30.3.3 of Attachment X of the NYISO tariff.⁵ Small generators in New York (up to 20 MW in size) seeking to interconnect, to the extent applicable under the NYISO tariff, will instead be subject to the Small Generator Interconnection Process provisions of Attachment Z of the NYISO tariff.⁶ A Generation facility of 5 MW or less interconnecting to a New York distribution utility, whether connected in front of, or behind-the-meter, is typically subject to the NY Standardized Interconnection Requirements (SIR), although there are cases in which the NYISO small generation interconnection tariff may apply.⁷

Bidders submitting a proposal for a long-term REC contract must demonstrate that they are either already in commercial operation, or are sufficiently advanced in the interconnection process to be considered sufficiently mature for the 2017 REC procurement. As noted below, in subsequent years, the stringency of the requirement may be increased. The following threshold interconnection requirements, differentiated by size, location and/or interconnecting authority, will provide a level of confidence to

⁵ An interconnection request under the NYISO Large Facility Interconnection Process requires a \$10,000 application fee, a \$30,000 interconnection study deposit, and a demonstration of site control or an additional \$10,000 deposit. See Steps in the NYISO Large Facility Interconnection Process,

http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Interconnection_Studies/Other_Interconnection_Documents/steps_nyiso_large_facility_interconnection_process.pdf.

⁶ These requirements are summarized in Steps in the NYISO Small Generator Interconnection Process, http://www.nyiso.com/public/webdocs/markets_operations/services/planning/Documents_and_Resources/Interconnection_Studies/Other_Interconnection_Documents/NYISO_Summary_of_SGIP.pdf.

⁷ These requirements are delineated in the New York State Standardized Interconnection Requirements and Application Process For New Distributed Generators 5 MW or Less Connected in Parallel with Utility Distribution Systems, [http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/DCF68EFCa391AD6085257687006F396b/\\$FILE/05262818.pdf/SIR%20FINAL.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/DCF68EFCa391AD6085257687006F396b/$FILE/05262818.pdf/SIR%20FINAL.pdf)

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NYSERDA. All bidders must self-certify the following actions have been taken and provide appropriate supporting documentation (discussed below).

- Bidder has researched and identified which interconnection requirements are appropriate for their generation facility. For larger generation facilities, the bidder represents that they understand that multiple studies (feasibility, system impact studies and a class year study) may be required and that they understand the cost and time implications of these studies. For new DER generation, bidder certifies that they have read and understood the most recent requirements⁸ published by DPS.
- For generation facilities above 20 MW, bidder certifies that a valid interconnection request has been submitted and applicable fees have been paid to either NYISO or, if the generation facility is located in an adjacent control area, the applicable interconnecting authority.
- Generation facilities up to 20 MW in New York
 - Bidder certifies that they are subject to the NYISO Small Generator Interconnection Process, have identified the applicable requirements, and have submitted an interconnection request or prepared drafts of all initial interconnection application documents such that they can submit initial documentation within generation facility 30 days of contract award^{9,10}; or
 - Bidder certifies that they are subject to NY Standardized Interconnection Requirements, have discussed their project with the relevant utility company, and have identified the applicable requirements. Bidder also certifies that they have submitted an interconnection request or have prepared drafts of all initial interconnection application documents such that they can submit initial documents within 30 days of contract award.
- For generation facilities less than 5 MW qualifying for fast track review, applicants certify that they have researched the threshold requirements for application to the fast track process, have contacted the local utility with jurisdiction and have prepared the necessary documentation and application to be submitted within 30 days of contract award.
- For generation facilities up to 20 MW located in adjacent control areas, bidder certifies that a valid interconnection request has been submitted and applicable fees have been paid to the applicable interconnecting authority.

Supporting documentation for all generation facilities must include evidence of meeting the above requirements and additional information evidencing that the bidder has thoroughly evaluated its interconnection options, including:

- For generation facilities less than 20 MW for which the applicable tariff (NYISO small generator interconnection tariff or local utility tariff) may be unclear, the bidder will document for which process it has applied or expects to apply, and the basis for that assertion.

⁸ New York State Standardized Interconnection Requirements and Application Process For New Distributed Generators 5 MW or Less Connected in Parallel with Utility Distribution Systems

⁹ The applicable requirements may, depending on the circumstances, be those of an entity other than the NYISO.

¹⁰ NYSERDA expects that interconnection approval will typically be obtained with 90 days of contract execution for such generation facilities.

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- As applicable, provide proof of interconnection application submission or provide a copy of a draft application. If an application has been submitted, provide the current status, and timeline, and/or Interconnection Agreement.
- Details on the Point of Interconnection/Point of Common Coupling.
- A critical path schedule for its proposed generation facility that includes a reasonable schedule for the generation facility to proceed through the applicable interconnection process to obtain an interconnection agreement and for the construction of any applicable interconnection and network upgrade facilities consistent with the expected commercial operation date of the proposed generation facility.

ii. Permitting

Another indicator of a viable energy generation facility is that the permitting process and requirements for the generation facility are well understood and that the developer has a reasonable schedule for obtaining required permits that is consistent with its expected commercial operation date. Generation facilities of different types and sizes and environmental impact will have potentially very different permitting requirements. Understanding permitting and regulatory compliance requirements for a generation facility is critical to successful generation facility development.

Bidders submitting a proposal for a long term REC contract must demonstrate that they are either already in commercial operation (and thus fully permitted) or that they are well informed of all applicable requirements and sufficiently advanced in planning for the permitting process to be considered sufficiently mature for the 2017 REC procurement. To ensure that applicants have considered these factors appropriately, all generation facilities will be required to certify the following and provide supporting documentation that validates their claim.

- The generation facility has developed a list of all permitting and approvals required by local, state and federal agencies. The list should include conditional use permit/special use permits as applicable, air permits, planning board approvals, U.S. Army Corps of Engineers letters, etc.
- The generation facility has performed an initial review of historical/archeological/cultural resource impacts, wetland impacts, and fish and wildlife impacts.
- If applicable, the generation facility has developed emissions profiles for the generation facility that are consistent with state/federal emission regulations and RES eligibility requirements.
- If applicable, the generation facility subject to Article 10 must have submitted a Public Involvement Plan to the Department of Public Service, or provide to NYSERDA a complete draft of a plan ready for submission.

NYSERDA will also require that a bidder provide (a) a description of the process and requirements for necessary generation facility permits and approvals (b) a critical milestone schedule for the generation facility up to and including the date of commercial operation that includes all major steps associated with the application for and receipt of all required permits to construct and operate the proposed facility, (c) supporting documentation in support of each of the threshold requirements discussed above, and (d) a summary of the current status of all permitting activities.

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iii. Site Control

Bidders submitting a proposal for a long-term REC contract must demonstrate that they have established a minimal level of control over the site upon which the bidder intends to build its proposed generation facility as well as the land necessary for interconnection. Since site control is one of the critical early threshold issues in project development and consideration will only be given to projects that can demonstrate that sufficient site control is already in place to allow project development to occur along a reasonably predictable trajectory. Since site control will occur differently for different scales and types of generation facilities, the certifications and accompanying support for meeting this threshold requirement are as follows, as they apply to the generator site:

- Bidder certifies that it controls the property by virtue of ownership; a valid written leasehold interest for such real property for at least the duration of the time it will take to develop and operate the generation facility for the duration of the REC contract; a valid written option with all terms stipulated unconditionally exercisable by the applicant or its assignee for the purchase or lease of the subject real property; or a duly executed contract for the purchase or lease of such real property; or
- Bidder certifies that it has executed an exclusivity agreement or letter of intent with the subject property's owner that includes terms to conclude a legally binding site control agreement within 120 days of contract award.

A lease must unconditionally bind the lessor, owner or the property, subject to payment of a named rent and compliance by the bidder with standard commercial terms. An option or contract of sale must unconditionally confer on the bidder the right to purchase or lease the property within an agreed upon period at a named price. It must be binding on the owner of the property and provide that the owner cannot unilaterally withdraw, revoke or rescind the obligation to sell or lease the property to the bidder.

For generation facilities requiring more than 15 acres for development, the applicant must demonstrate site control as described above for at least 80% of the total acreage needed for generation facility completion. However, failure to gain control of the total generation facility acreage (as control is defined above) within 120 days of contract award may result in contract termination.

If the interconnection facility does not fall entirely within the site required for generator equipment (such that no additional site control issues are applicable), the bidder must also certify that its site control for interconnection facilities meets the following requirements:

- Identification of all necessary rights-of-way and/or other sites to be secured necessary to complete the generator lead, including alternatives if applicable;
- Demonstration of control over necessary rights-of-way consistent with the options identified above for generator footprint, and/or an executed right-of-way agreement, which provides necessary rights to the developer (if the generator lead facilities will be merchant-owned) or is controlled by or assignable to the interconnecting utility that will own interconnection facilities.

If site control over for interconnection facilities is not demonstrated at the time of the bid, NYSERDA may waive the requirement; however, failure to gain site control of such interconnection lead line right-of-way within 180 days of contract award may, at NYSERDA's discretion, result in contract termination.

NYSERDA will require that a bidder provide applicable documentation evidencing site control.

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iv. Additional Requirements

All generation facilities seeking long-term NYSERDA REC contracts under RES procurements must demonstrate that they have completed sufficient generation facility planning and due diligence to evidence that the generation facility is reasonably likely to be successfully developed, should it secure a long term REC contract from NYSERDA. Applicants will be required to check boxes for each item completed and attach supporting documentation. However, at its sole discretion, NYSERDA will reserve the right to ask for the additional information prior to making an award if deemed necessary to evaluate the viability of the generation facility bid. These additional demonstrations of minimum viability may include:

- Experience in developing and financing generation facilities
 - The company or the principals in its development team must have experience successfully developing electrical generation facilities of similar or larger size and scope.
 - Creation and submittal of a Financing Plan including descriptive narrative and documentation of approach, past financing experience of the company or development team for comparable generation facilities, and financial capability.
 - Discussion of the bidder's plan for hedging the value of energy and capacity produced by the generation facility.
- Site Layout and Equipment, including creation and submittal of:
 - A Site Plan, including generation facility fence/boundary/limits-of-work.
 - A list of major equipment or alternatives (supplier name, quantities) and a plan to procure major long lead-time equipment sufficient to meet generation facility timelines.
- Operation and Decommissioning plans, including creation and submittal of:
 - An Operating Plan for the anticipated generation facility lifetime.
 - A Decommissioning Plan
- A Resource Assessment for the generation facility based on generation facility type, applicable to the generation facility's technology as follows:
 - Solar PV System: a system performance model preferentially using an industry standard tool such as PVSyst, Helioscope or System Advisor Model (SAM).
 - Wind System: One year's worth of wind data collected at the generation facility site at hub height, or at least 6 months of data with correlation data or detailed site-specific modeling by an independent meteorologist.
 - For biomass and hydroelectric: a feasibility-level resource study by an independent engineer.
 - For other generation facilities, contracts or a third party assessment of fuel/resource availability.
- Generation facility economics
 - A capital cost estimate (\$/kW) – labeled ac or dc as appropriate.
 - An estimate of first year annual kWh production.
- Generation facility timeline

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- A key milestone table showing completion of critical development objectives such as finalization of site control, completion of necessary permits, interconnection agreement approval, financial close, construction completion, start-up and testing.
- Other
 - Assessment and identification of existing utilities and utility rights-of-way within site limit of work.

v. *Bid Deposit*

The purpose of the provision of a bid deposit, submitted along with the Step One application package, is to help filter out speculative bids from which bidders might walk away before executing contracts. Higher bid deposits benefit larger developers with greater financial means and could discourage viable generation facilities from smaller developers. Therefore, setting of a bid deposit level is a balancing act between increasing individual bid viability and promoting competition. In the RES solicitations, NYSEDA will benchmark with other similar procurements, and adopt a capacity-based requirement appropriate to meet its objectives.

4.4. Step Two: Bid Evaluation

a. Method

The CES Order required DPS Staff, in consultation with NYSEDA, to propose procurement guidelines for consideration by the Commission as part of an implementation plan. As a default, the part price, part economic development scoring that was previously used in RPS Main Tier REC contract solicitations for comparing bids is to be incorporated into the proposed guidelines unless such approach could be demonstrated to be ineffective. Indeed, a NYSEDA RPS Main Tier 2013 Program Review¹¹ concluded through an analysis of quantifiable benefits and costs that public investment through the RPS Main Tier had a positive impact on the State economy and the environment. The positive economic impact was in large part attributed to the fact that every \$1 of State RPS funding invested captured on average almost \$3 in direct investments in New York.

This historic method of evaluating proposals was evaluated by DPS Staff and NYSEDA. They find that the historic method of evaluating bids under the RPS using a 70 percent (70%) price weighting and a 30 percent (30%) weighting for the expected economic benefits to New York (with a subsequent verification process) is effective; however, the approach should be reconsidered in light of the relatively significant procurement quantities anticipated under the RES and its relationship with the RES's LSE obligation established in the CES Order. Proposed modifications are described below.

b. Initial Evaluation - Generation Facility Evaluation Criteria

i. *Price: Ranking and Weighting*

In the Main Tier RPS procurements, 70 percent (70%) of the evaluation weight was accorded to the bid price on a net present value basis, according to the proposed contract duration of the bid. Given the stated importance of minimizing costs associated with RES compliance and the direct correlation between a project's bid price and its overall cost to ratepayers, NYSEDA proposes to maintain the

¹¹ NYSEDA Renewable Portfolio Standard Main Tier 2013 Program Review: Direct Investments in New York State, available at <https://www.nyserda.ny.gov/-/media/Files/EDPPP/Energy-and-Environmental-Markets/RPS/RPS-Documents/2013/2013-RPS-investments-NYS.pdf>

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relative weighting of price in future procurements and maintain a net present value evaluation method as utilized in the 2016 Main Tier procurement.

ii. Economic Benefits: Ranking, Weighting, and Verification

Under the Main Tier RPS procurements, up to 30 percent (30%) of the available points were awarded to bidders based on verified economic benefits falling into the following five categories:

- a) Long Term Jobs created in New York State;
- b) Payments/Benefits to New York State and/or its Municipalities;
- c) Royalties and/or Payments for Fuel and Resource Access;
- d) In-State Purchases or Consumption of Goods; and
- e) Short Term Employment of New York State Workers.

The objective of including economic benefits criteria in the RPS procurements was to incent bidders to procure New York goods and services. Evaluation of RPS verified economic benefits in the 2013 Program Review demonstrated that this requirement does effectuate bidder behavior, as firms appeared to make decisions based on these requirements. As out-of-state bidders may still earn points by using New York State sourced goods or services, this requirement is non-discriminatory. Thus this approach is well-suited as a differentiator among bids under the RES, which is open to generators in New York State or adjacent control areas. The Main Tier RPS procurements required that bidders document actual economic benefits within 60 days of the third anniversary of the commencement of contractual deliveries. If the ratio of verified actual economic benefits to expected economic benefits claimed in the bid falls below 85%, then the contract price is reduced by the deficiency percentage for the remainder of the delivery term. This potential for 'claw-back' serves to mitigate the potential for bidders to over-claim such benefits.

The Order required NYSERDA to continue to apply the same approach utilized in the Main Tier RPS with respect to economic benefits unless the approach can be demonstrated to be ineffective. While NYSERDA concludes that the approach, on the whole, is effective, it has been time-consuming for NYSERDA, and is a periodic function that may not be optimal for NYSERDA to staff to perform. NYSERDA therefore proposes to modify the proposal requirements and the process for verification in order to simplify the process to be less labor-intensive overall, as well as to assure that the benefits are reported consistently and with improved accuracy, as follows.

i. Weighting

Under the RPS Main Tier evaluation process, NYSERDA's TEP, consisting of NYSERDA staff, DPS Staff, and outside independent reviewers, evaluates and awards up to 30 points to bid proposals based on the degree to which each Bid Proposal demonstrates a contribution to the economic benefits categories listed above. NYSERDA and Staff propose to reduce the relative weighting for economic benefits in the RES procurements to 10 percent (10%) to allow additional criteria to be included in the quantitative scoring criteria as described below.

ii. Expected Economic Benefits Evaluation

The Main Tier RPS solicitations require bidders to submit as part of their bid a description of the incremental economic benefits to New York State created by the generation facility under the five

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categories listed above, in declining order of relative weight. For each category, the benefits quantified are those which can be demonstrated during the first three years following the award. Bidders must also provide a detailed justification specifying how the claimed Incremental Economic Benefits are eligible for evaluation, including relevant information or documentation which demonstrates the eligible nature of these claims. Finally, bidders must provide a detailed Verification Plan specifying how the economic benefits claimed for evaluation will be documented for contract compliance.

While the process used in current Main Tier RPS solicitations generally achieves its objectives, NYSERDA proposes to streamline the process of bid submission and evaluation to make it less cumbersome on both bidders and the TEP, and to feed into a refined post-award demonstration process. Proposed changes include:

- development of online forms which will guide bidders into preparing submissions in a more consistent manner, and which will streamline TEP member review;
- simplification of the categories listed above; and
- adoption of verification standards which will define best practices in documentation and verification.

These changes will allow a streamlining of the bidders requirements, and also streamline the task of the TEP.

iii. Post-Award Demonstration of Actual Economic Benefits

Under the Main Tier RPS, sellers are required to meet an annual economic benefits reporting requirement for the duration of the contract. The annual report, to be submitted by the seller to NYSERDA within sixty days of each anniversary of the commencement of the contract delivery term, is a detailed report identifying and describing the Incremental Economic Benefits actually created as a result of the development, operation and/or construction of the generation facility.

In addition, under current practices, three years following the start of contract deliveries the seller must submit an economic benefits report including third-party documentation demonstrating the actual economic benefits that resulted from the construction and operation of the generation facility. The report includes submission of voluminous supporting records and documents relating to employment, purchases, and other payments necessary to demonstrate the economic benefits created by the generation facility under the categories and within the eligibility requirements. NYSERDA staff must then review the documents in an effort to verify the actual expenditures, and determine the percentage ratio of actual verified to claimed economic benefits. This result is then compared against the 85 percent (85%) of claimed benefits minimum contractual requirement to determine whether a payment reduction will be applied for the remainder of the contract term to compensate for excessive evaluation points awarded at the evaluation stage.

NYSERDA has found that the verification effort used in the RPS Main Tier solicitation process is generally effective at meeting its objectives but presents challenges for NYSERDA staff from a volume and consistency perspective. NYSERDA proposes to reduce the effort required of both sellers and NYSERDA staff, and improve and streamline the consistency of approach, through the following refinements in the verification process:

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- Development and use of verification processes to standardize submission and documentation of best practices. In addition to standardization, such standards will streamline the collection and documentation of economic benefits.
- Reducing and streamlining the annual report requirement. Rather than require an expansive filing in years 1 and 2, NYSERDA proposes to require a 1-page filing detailing the seller's plans for the year 3 verification audit filing. In year 3, the verification filing is proposed to replace the annual report requirements. Finally, NYSERDA proposes to eliminate the annual report requirement from all years following the submission of the year 3 economic benefits report.
- Replacement of the NYSERDA verification process with a requirement for independent verification. NYSERDA proposes to require that the seller submit an economic benefits report independently verified by a New York State certified, independent third-party auditor funded at the seller's expense. This change will shift the audit diligence load from NYSERDA to firms that are trained, qualified and staffed for such a function.
- Develop an audit protocol to serve as a requirements document to guide the independent audit. Availability of such a guide will serve several purposes. First, it will standardize the submission process, definition of valid expense claims, and documentation, enhancing the objectivity, consistency and veracity of the benefits claimed. Second, it will allow auditors to understand the process they are asked to perform, and lower the cost to perform the services by stimulating competition in provision of such services. Finally, it will allow NYSERDA to explicitly develop and apply protocols for documentation and audit that can be differentiated to the size of a generation facility, offering a streamlined and lower-cost approach to smaller generation facilities so as not to unfairly burden their bids with high administrative costs.

In addition, making the cost of the audit by a New York firm a claimable economic benefit will allow NYSERDA to monitor the cost of this audit function over time and by generation facility size. Such monitoring will allow NYSERDA to identify opportunities for further streamlining, adjust requirements for different generation facility sizes and types, and identify whether the approach is sufficiently reducing aggregate administration costs.

iii. Project Viability: Ranking and Weighting

Given the importance of feasibility and ultimate project completion toward meeting the RES goals, NYSERDA proposes to utilize a Project Viability criterion with a 10 percent (10%) weighting in the RES solicitations. Generation facilities that are problematic from a development standpoint and are reasonably viewed by the TEP as having a materially higher completion risk despite having passed the Step One threshold screening will receive fewer points in this category. Conversely, in a given solicitation, NYSERDA and the TEP may provide additional points to a generation facility that is perceived as having greater viability and/or a shorter time frame to expected commercial operation relative to other bids. In particular, this factor may be critical where there is an actual or expected shortfall of RECs relative to collective LSE RES obligations.

NYSERDA and the TEP will utilize the information submitted by bidders with their Step One packages and any other information NYSERDA may reasonably request, or independently observe, in evaluating bids against this criterion. Specific evaluation criteria details will be published in the relevant solicitation.

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iv. *Operational Flexibility and Peak Coincidence: Ranking and Weighting*

Generation sources that can be dispatched at the request of the power grid operators or the plant owner are desirable to balance the electric system; to optimize generation dispatch; to minimize operating reserve requirements; and to address grid congestion and constraints. Therefore, a criterion with a 10 percent (10%) weighting will be included to evaluate the related value that a generator provides in this area. Criteria that will be considered include a facility's ability to address: load matching; peak load demands; load following, dispatchability, ability to provide operating reserves/respond up or down to system operator instruction and frequency regulation. NYSERDA and the TEP will utilize the information submitted by bidders with the Step One packages and any other information NYSERDA may reasonably request or independently observe in evaluating bids against this criterion. Specific evaluation criteria details will be published in the relevant solicitation.

c. *Summary - Initial Evaluation - Generation Facility Evaluation Criteria*

In summary, the following criteria and weighting will be utilized in the RES solicitations:

Bid Price: 70 percent (70%)
Economic Benefits: 10 percent (10%)
Project Viability: 10 percent (10%)
Operational Flexibility and Peak Coincidence: 10 percent (10%)
Total: 100 percent (100%)

d. *Application of Portfolio Risk Assessment*

After conducting its review and scoring of each facility's economic benefits claims, project viability and bid price, the TEP will develop a *preliminary* rank order of generation facilities based on each generation facility's score with a tentative cut-off line based on the solicitation's volumetric procurement target.

The TEP will then consider the following factors as they may apply to the preliminary award group in making a final award group recommendation, using information provided in the Step One process by the relevant bidders. Such factors will be clearly articulated in the relevant solicitation and the rationale for their application will be appropriately documented in the contracting record both to ensure transparency in the evaluation process and to ensure their objective application.

The following portfolio risk assessment limits center around the ability of the portfolio to be constructed at the proposed locations, at the proposed price, and within the required timeframe. If the TEP proposes to apply these limits, it will consider the potential cost impact of such decision (relative to the generation portfolio that otherwise would have been selected), only exercising such a limit should the impact on the generation-weighted average cost of the portfolio increase by less than 10 percent (10%) with the application of the portfolio limits.

Such limits will include:

Diversity of resources: The TEP may constrain any particular eligible technology to comprise no more than 80 percent (80%) of the award group on an annual generation basis.

Diversity of owners: The TEP may constrain any owner or affiliate of an owner to comprise no more than 80 percent (80%) of the award group on an annual generation basis.

Developer experience: The TEP may limit awards to a specific project owner to a capacity of no more than five times the renewable capacity that the owner has successfully brought to commercial operation in the past.

NYSERDA's goal will be to select viable generation facilities that will provide economically-priced RECs and actual economic benefits to New York consistent with diversity of resources and ownership considerations.

4.5. Approval of Procurement Results

Consistent with the regulatory approval process instituted in the RPS Main Tier solicitations, all RES procurement results are subject to the review and approval of the Department of Public Service.

4.6. Conditions to be Met Prior to Contracting

a. Contract Security Requirements:

NYSERDA proposes to retain from the current Main Tier RPS solicitation process the initial requirement for a seller to provide Contract Security to NYSEDA based on the number of MWh per year offered under the bid within 10 days of selection for a contract. NYSEDA also currently requires for Main Tier solicitations provision of additional Contract Security within one year of contract execution. In the most recent 11th RPS procurement, NYSEDA also allowed sellers to extend the commercial operation milestone date by five calendar quarters through provision of additional Contract Security, or providing evidence of an executed interconnection agreement with either NYISO or the applicable interconnecting entity.

As noted above, in order to increase the likelihood of generation facilities with long-term REC contract awards successfully coming to fruition, NYSEDA proposes to modestly expand the opportunity for extending the commercial operation milestone date by virtue of posting additional security or entering into an interconnection agreement, and advance the date of the step increase in contract security. Consistent with the date extensions discussed above, specifically NYSEDA proposes to replace the single extension of 5 calendar quarters (15 months) used in the 11th RPS RFP, which could be secured by providing additional material contract security, with a revised approach. The revised approach will offer a series of up to four 6-month extensions (up to 24 months in total), with each 6-month extension requiring provision of additional material contract security. At any of these extension opportunities, provision of evidence of an executed interconnection agreement with the applicable interconnection authority may serve as a substitute to provision of additional contract security. At any juncture in which the COMD is not met and an extension is not arranged, a non-performing contract may be terminated, allowing earlier action to replace non-performing projects than under the Main Tier RPS contracts.

4.7. Post-2017 Procurements

With the availability of greater lead time to signal the market of its solicitation requirements and criteria, and the commensurate greater time for developers to respond by advancing generation facilities through the development pipeline, NYSEDA anticipates that future procurements can include revisions to various solicitation parameters. The envisioned changes are intended to increase certainty with respect to procurement outcomes, improve the quality of applications, reduce the number of applications that are judged unacceptable, and increase the chance that generation facilities receiving

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contracts are ultimately successful; all without materially precluding competition. Some potential changes under consideration are provided below.

a. Pricing

NYSERDA anticipates that future procurements may include requests for generation facilities to provide bid pricing at a more granular level than the current single-fixed production payment offered throughout the contract term. Additional pricing options may include, but are not limited to on-peak/off-peak pricing or seasonally adjusted pricing with quarterly, monthly, or daily granularity to maximize energy value to the system.

b. Threshold Eligibility Requirements

The threshold eligibility requirements are a key component to NYSERDA's evaluation process. Future procurements are expected to include more stringent requirements that further ensure that generation facilities receiving contracts are highly likely to be completed. The goal is to encourage investment in development of proposed clean energy generation facilities and to increase likelihood that contracted generation facilities will be built. However, movement to more stringent threshold requirements will also depend on general market developments. The following changes to the threshold requirements are being considered for the future:

- Interconnection requirements may be tightened to require that generation facilities can document that they are further along in the process of receiving an interconnection agreement than required under the 2017 solicitation(s). For example, larger generation facilities may need to show evidence that a Phase 1 interconnection study has been completed. Smaller generation facilities may need to demonstrate that they have received some initial interconnection guidance or have submitted an application prior to contract award.
- Generation facilities may also need to demonstrate that they are further along in the permitting process. For example, generation facilities may be required to have submitted an application for a Conditional Use Permit or Special Use Permit, if applicable. For combustion-based generation facilities, applicants may be required to show that they have applied for an air permit or a state facility permit or permit modification.
- With respect to generation facility viability, applicants may be asked for a greater degree of evidence, or meet a higher standard, with respect to generation facility performance, financial capabilities and details with respect to key generation facility partners. For example, letters may be required from key vendors (PV panel suppliers, Turbine manufacturer, boiler manufacturer, etc.) indicating that they are capable of delivering equipment in accordance with the generation facility development timeline.

Contract terms and conditions may also evolve in future procurements. New requirements may include the following:

- Purchase orders or contracts executed for major equipment procurement to be issued within 12 months of contract award.
- Contracts for generation facility engineer (Engineer of Record) and/or engineering/procurement/construction contractor must be executed within a specified amount of time from contract award date.

- An absolute deadline (time from contract award date) may be imposed to secure all necessary permits.

Changes of this nature would be reflected as additional contractual milestones, which would provide opportunity for terminating and replacing in subsequent procurements generation facilities that are not advancing at a sufficient pace. Such changes will signal to the market the need to advance generation facilities through the development process and offer more mature generation facilities in response to RFPs. Such changes need to be introduced with care into the solicitation process when NYSERDA's market analysis suggests that the development pipeline has become sufficiently robust such that tighter requirements will still yield competitive results.

c. Evaluation Criteria

Evaluation criteria are also expected to tighten somewhat, with a stronger emphasis on parameters such as past developer performance, more detailed requests with respect to construction experience, and bonding capacity. NYSERDA may also seek to select projects to meet the locational, strategic and programmatic objectives of the RES, specifically its alignment with the goals of the State Energy Plan and Reforming the Energy Vision ("REV") and the associated framework.

5. LSE Demonstration of Compliance

LSEs must demonstrate compliance with the CES's RES Tier 1 and ZEC programs for each compliance period for which a RES and ZEC LSE compliance target is established. The RES compliance period is the twelve-month period beginning on January 1 and concluding on December 31. The ZEC compliance period is the twelve-month period beginning on April 1 and concluding on March 31.

For the RES and ZEC programs, calculation of LSE compliance obligations and reporting on compliance ZECs and Tier 1 RECs held by an LSE will be accomplished through NYGATS. LSEs are required to register an account in NYGATS in order to transact RECs and ZECs, receive communications, and generate compliance reports. In order for RECs and ZECs to be eligible for meeting compliance obligations they must be issued by and ultimately settled in NYGATS. NYGATS will generate reports on ZECs and Tier 1 RECs held in LSE NYGATS accounts that must be submitted to NYSERDA for demonstration of compliance. LSEs that elect to make ACPs to satisfy all or part of their RES obligation will be required to report those transactions as an attachment to the NYGATS RES Compliance Report. NYSERDA as the CES administrator shall have access to such LSE accounts for compliance verification purposes.

5.1. Compliance Obligation

Compliance obligations of LSEs are determined differently for the RES Tier 1 and ZEC requirements. Because there are a defined number of ZECs generated in a compliance year, they are allocated to LSEs in proportion to their load assuming that appropriate payments have been made to NYSERDA. In contrast, an LSE's Tier 1 RES obligation is determined by multiplying the LSE's annual load times the annual Tier 1 percentage compliance target. The actual LSE compliance obligation for the RES and ZEC programs is calculated five months after the compliance period ends using the load calculated from data reported in NYGATS for the compliance period.

5.2. Compliance Reporting

Under the CES, creation of supporting reports to support compliance reporting for the RES and ZEC programs will be an additional component of the NYGATS settlement process. Preliminary and final

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compliance reports from NYGATS will create a record of ZEC and Tier 1 REC balances in an LSE's account on the date the report is generated.

a. NYGATS Settlement

NYGATS settlement is an annual process consisting of 1) matching certificates created in NYGATS for production within the year to the LSE's electricity delivered to and consumed in the New York Control Area, 2) allocating RECs acquired by NYSERDA which are not Tier 1 eligible to LSEs according to their corresponding load that funds clean energy programs through delivery surcharges, and 3) assigning Residual Mix Certificates to any unfulfilled load. This information is used to create an Environmental Disclosure Label for each LSE as required under the Environmental Disclosure Program (EDP). A new EDP Subaccount is created every calendar year and LSEs must transfer certificates into that EDP Subaccount for label creation. At the end of the settlement period, all certificates of the settled vintage year are retired and are no longer available for transacting in NYGATS, with the exception of certificates in banked subaccounts. Any implications to the EDP program resulting from the CES program will be addressed in the Environmental Disclosure Program proceeding (Case 15-E-0696).

The RES and ZEC programs will use data in NYGATS to calculate LSE load, to calculate compliance obligations, to determine LSE's REC and ZEC balances and to generate compliance reports. In order to align compliance with NYGATS settlement, the end of trading for Tier 1 certificates of a vintage year will correspond with final RES compliance reporting and settlement will occur after final ZEC program compliance reporting. Since NYGATS certificates from a settled vintage year are no longer transferable within or between accounts, with the exception of banked certificates, NYGATS will use the period between the end of trading and settlement to accommodate any adjustment to certificates deemed legitimate by the NYGATS Administrator. In October of each year, NYGATS data is settled for the prior vintage year and EDP labels are created. Compliance reporting for the RES and ZEC programs will be described in more detail below. Throughout this process, any date that falls on a weekend or holiday will be moved to the next business day.

i. Load

Each LSE's RES Tier 1 compliance obligation is determined based on a calculation of the annual LSE load multiplied by the annual Tier 1 RES obligation percentage. Each LSE's ZEC compliance obligation is determined based on a calculation of the annual load share ratio for the LSE multiplied by the annual ZEC obligation. Pursuant to the NYGATS Operating Rules, load is calculated by using NYISO version 2 generation data and adding generation from load modifiers utilized by distribution utilities. The load modifier data adjusts the total load as well as the total load served by the LSE utilizing the load modifier(s). The adjusted total load served by each LSE is then divided by the adjusted total statewide load to determine the percentage of total load served by each LSE.

Presently, the NYISO generation data is reported by the NYISO to NYGATS on a monthly basis and load modifier data is reported to DPS by the distribution utilities on an annual basis. In order for accurate calculation of load share ratio, upon which accurate calculation of RES and ZEC program targets and obligations are based, commencing in January of 2017, electric distribution utilities must report the total monthly generation data for each load modifier facility directly to NYGATS on a monthly basis.

b. Trading and Banking of Compliance Certificates

Based on the requirements in the CES Order, ZECs are not eligible for trading between LSEs or for banking. ZECs may only be used for demonstration of compliance with the current compliance period LSE obligation. NYGATS will set restrictions on the associated ZEC certificates to restrict their movement to only occur between NYSERDA and the purchasing LSE, where they will be retired for compliance.

Regarding trading and banking of RECs for RES compliance, NYSERDA will be authorized to bank Tier 1 RECs for two subsequent compliance periods. Consistent with the CES Order, Tier 1 RECs purchased from NYSERDA for RES compliance will not be eligible for trading in 2017 but can be banked for future compliance according to the conditions below. In 2017, excess Tier 1 compliance RECs originally purchased from NYSERDA may also be sold back to NYSERDA at their cost minus NYSERDA's administrative adder, if applicable. Tier 1 RECs purchased from entities other than NYSERDA are not eligible for the 2017 buyback provision and may be traded.

For meeting the required percentage for Tier 1 of the RES in any compliance period, only an obligated LSE may use NYGATS certificates associated with production during one compliance year in excess of the compliance year obligation for compliance in the two subsequent compliance periods (banked certificates), subject to the following limitations:

- 1) Only obligated LSEs, and no other market participants, may bank excess certificates above the current year's Tier 1 RES LSE obligation for future RES LSE obligation compliance.
- 2) The obligated LSE is in compliance with the RES for all previous compliance periods.
- 3) Banked certificates are in excess of the number of certificates needed in the compliance period in which they were generated, and such excess NYGATS certificates have not previously been used for compliance with the RES, and have not been otherwise transferred to other parties.
- 4) Tier 1 NYGATS certificates banked in any one year do not exceed thirty percent (30%) of the certificates needed by the obligated LSE for compliance in the year they were generated.
- 5) Banked NYGATS certificates were produced by the generation of electrical energy sold to New York retail customers during the compliance period in which they were generated; and have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sale, or used to satisfy obligations in jurisdictions other than New York, or be used to substantiate any voluntary program claims.

c. NYGATS RES Compliance Report

The structure of the compliance report for the 2017 RES compliance period is described below. Compliance reporting for subsequent program periods will continue as described below unless otherwise amended.

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NYISO version 2 data for the RES compliance period will be available in NYGATS in May of 2018. In June of 2018, LSE loads for the 2017 RES compliance period will be calculated and Preliminary RES Compliance Report will be generated that includes:

- 1) LSE load for January - December 2017
- 2) Actual 2017 Tier 1 REC compliance obligation
- 3) Current balance of Tier 1 RECs in the LSE account

After the Preliminary Report has been generated, a thirty-day reconciliation period commences during which an LSE can finalize Tier 1 REC transactions for the compliance period in order to satisfy their compliance obligation. At the end of this reconciliation period, trading for the vintage year closes in NYGATS. With the closing of trading, LSE's can no longer transfer certificates into or out of their vintage year EDP Subaccount. Tier 1 RECs transferred into vintage year EDP Subaccounts will be used for demonstration of compliance in the RES program for the corresponding compliance period. In July of 2018, a Final 2017 RES Compliance Report will be generated which contains the same elements as the preliminary report, updated to reflect the amount of Tier 1 RECs in the LSE's 2017 vintage year EDP Subaccount(s). After settlement of the 2017 vintage occurs, this final compliance report remains a static record of the quantity of Tier 1 RECs the LSE used for compliance in the 2017 RES compliance period.

i. ACP Payments

LSEs will be able to satisfy their compliance obligation for the RES Program, all or in part, through the provision of Alternative Compliance Payments. LSEs must retrieve their preliminary RES compliance reports from their NYGATS account and determine if they will utilize ACPs to meet their compliance obligation. If they elect to make ACPs for the RES compliance period, these payments will be made to NYSERDA. NYSERDA will provide necessary forms and instructions for this purpose. NYSERDA will accept ACPs from LSEs during the time period between the release of the preliminary and final RES compliance reports, typically June 1 through July 1 of each year. No later than two weeks after the release of the final RES compliance report, NYSERDA will provide an ACP payment report to all LSEs that elected this option for the RES compliance period. This report must be attached to the RES Compliance Report generated by NYGATS when submitting compliance documentation to NYSERDA.

d. NYGATS ZEC Compliance Report

The structure of the compliance report for the 2017-2018 ZEC compliance period is described below. Compliance reporting for subsequent program periods will continue as described below unless otherwise amended.

NYISO version 2 data for the ZEC compliance period will be available in NYGATS in August 2018. In September 2018 load share ratio will be calculated for the ZEC compliance period and April 2017-March 2018 vintage ZECs acquired by NYSERDA will be allocated to LSE Accounts in proportion to ZEC compliance period payments received by NYSERDA from the LSE, not to exceed the compliance obligation. A Preliminary ZEC Compliance Report will be generated that includes:

- 1) LSE load for April 2017-March 2018
- 2) LSE load share ratio for April 2017-March 2018
- 3) Actual 2017-2018 compliance period ZEC compliance obligation (total ZECs generated by eligible facilities (not to exceed purchase cap) multiplied by LSE load share ratio)
- 4) April 2017-March 2018 vintage ZECs in the LSE account

After the Preliminary Report has been generated, a thirty-day reconciliation period commences during which an LSE can finalize ZEC transactions for the compliance period in order to satisfy their compliance obligation. At the end of this reconciliation period, a Final 2017-2018 ZEC Compliance Report will be generated which contains the same elements as the preliminary report, updated to reflect the amount of April 2017- March 2018 vintage ZECs in the LSE Account. After settlement of the 2017 data occurs, this compliance reports remains a static record of the quantity of ZECs the LSE used for compliance in the 2017-2018 ZEC compliance period.

5.3. LSE Compliance Filing

An LSE must make an annual CES compliance filing for every compliance period in which it served load that resulted in a RES and ZEC compliance obligation. In this filing, an LSE shall delineate how it has met its RES and ZEC program obligations.

a. Compliance Filing Requirements

Annual CES compliance filing(s) will be required of each obligated LSE. NYSERDA shall develop the requirements, forms, and instructions sufficient to verify compliance and share these forms on the CES web interface.

The annual compliance filing shall include, but not be limited to, the following information:

- 1) Final NYGATS RES Compliance Report;
- 2) ACP Report;
- 3) Withdrawal of banked excess compliance, i.e., the use of banked Tier 1 RECs from previous eligible periods, if applicable;
- 4) Statement of excess Tier 1 RECs banked for use in future years;
- 5) Statement of NYGATS certificates used in satisfaction of voluntary market products and claims (which are not used towards RES compliance), on a product basis (if the LSE sold products differentiated by their content); and
- 6) Final NYGATS ZEC Compliance Report.

With respect to substantiating information, the obligated LSE will provide NYGATS reports, reconciled metering data from distribution utilities, and other reports and information specified by NYSERDA. In addition to all required information, the filing entity shall – through an authorized signatory – submit an attestation that the information provided is true, accurate and complete.

Compliance filings will be considered public record unless specifically exempted by NYSERDA. Obligated LSEs may petition for confidential treatment of certain information.

b. LSE Compliance Filing Schedule

Annual compliance filings will be made to NYSERDA no later than thirty (30) calendar days after the final compliance reports for the compliance period are generated by NYGATS. NYSERDA will provide on the CES web interface all necessary forms and instructions. Obligated LSEs shall use the prescribed forms to submit all compliance filing material by the filing deadline. NYSERDA will designate contact information for obligated entities to ask clarifying questions about compliance filing materials.

c. NYSERDA Compliance Filing Review

NYSERDA shall conduct a timely review of all annual compliance filings. Where additional information is required to complete the review, NYSERDA will provide the obligated LSE with specific questions, and clearly outline its expectations for a satisfactory response. Supplemental responses and information must be provided to NYSERDA within 30 days of the request. Any obligated LSE failing to satisfy the compliance filing requirements through such supplemental response will receive a warning letter, including a stated date by which such failure must be cured. Failure to comply by the letter date will result in license suspension, and a prohibition on enrolling new customers. If the problem is not corrected by the dates in the suspension notice, the Entity's license will be revoked by the Department of Public Service.

6. State Compliance Reporting Requirements

6.1. CES Compliance Reporting

Using data in NYGATS, NYSERDA will produce and make available to the public an annual CES Compliance Report that summarizes the information submitted in the annual LSE compliance filings no later than six months after the annual LSE CES compliance filing due date. The annual CES Compliance Report will inform the Commission, DPS Staff and interested parties of the RES and ZEC program's progress in meeting the targets and Commission's renewable policy goals. The Compliance Report will include non-confidential data that provides the following, for both the subject compliance period and each previous compliance period:

- 1) The aggregated retail electric load served in New York State;
- 2) The aggregated RES-obligated load net of all exemptions;
- 3) The aggregated retail electric load served by renewable resources;
- 4) The extent to which the LSEs complied with the RES and ZEC program compliance obligations;
- 5) The extent to which the LSEs used Tier 1 RECs and ACPs in meeting the RES compliance obligation;
- 6) The extent to which the LSEs retired NYGATS certificates in satisfaction of voluntary market products and claims;
- 7) The aggregated amount of NYGATS certificates retired for voluntary purposes;
- 8) The aggregated amount of RES Tier 1-eligible RECs banked towards future RES compliance and withdrawn from past banking towards current year RES compliance, as well as NYSERDA's balance of banked RECs;
- 9) The names, locations and fuel types of RES Eligible Generation Units, from which the LSEs, as an aggregate, obtained the RECs in meeting the RES compliance obligation; and
- 10) The quantities, by location and fuel type, of NYGATS certificates, from which the LSEs, as an aggregation, obtained the RECs in meeting the RES Compliance obligation.

6.2. RES Procurement Performance

The annual RES Procurement Performance report shall include non-confidential data that provides the following, for both the subject compliance period and cumulatively:

- 1) A summary of the results of NYSERDA RES solicitations conducted in the subject RES compliance period;
- 2) Project development status for all active NYSERDA RES contracts as of the end of the subject RES compliance period;
- 3) Aggregated quantities of NYSERDA-procured RECs as of the end of the subject RES compliance period;
- 4) A summary of the disposition of NYSERDA-procured RECs as of the end of the subject RES compliance period; and
- 5) A summary of ACP funds received and their use.

6.3. RES Program Evaluation

NYSERDA shall provide a periodic assessment of the RES program's impacts and success to date. The RES Program Evaluation section may include the following:

- 1) An evaluation of the RES program's economic impacts (including long and short term job creation, property tax or payment in lieu of tax benefits to local governments and school districts, biomass fuel purchases, lease and/or royalty payments to landowners, etc.) to date, both actual and projected;
- 2) An evaluation of the RES program's contribution to greenhouse gas emissions reductions to date;
- 3) An evaluation of the RES program's success and attribution of the CES in achieving the Commission's other renewable policy goals and goals set forth in the Commission's Reforming the Energy Vision initiative]
- 4) The progress of New York's RES program as compared with the progress of similar programs in other states; and
- 5) An assessment of the impact on the Commission's renewable policy goals as a consequence of the achievements in the voluntary green market.