

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of CleanChoice Energy, Inc. for a Declaratory Ruling Clarifying That Large-Scale Renewable Projects May Conditionally Sell Their Renewable Energy Credits to Third Party Market Participants.

Case 25-E-_____

**PETITION OF CLEANCHOICE ENERGY, INC.
FOR A DECLARATORY RULING CLARIFYING
THAT LARGE-SCALE RENEWABLE PROJECTS MAY
CONDITIONALLY SELL TIER 1 RENEWABLE ENERGY
CREDITS TO THIRD PARTY MARKET PARTICIPANTS**

Attorneys for CleanChoice Energy, Inc.

John T. McManus
Anthony P. Luisi
HARRIS BEACH MURTHA CULLINA PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Tel. (518) 427-9700
jmcmanus@harrisbeachmurtha.com
aluisi@harrisbeachmurtha.com

Dated: May 2, 2025

Petition of CleanChoice Energy, Inc. for a Declaratory Ruling Clarifying That Large-Scale Renewable Projects May Conditionally Sell Their Renewable Energy Credits to Third Party Market Participants.

Case 25-E-_____

**PETITION OF CLEANCHOICE ENERGY, INC.
FOR A DECLARATORY RULING CLARIFYING
THAT LARGE-SCALE RENEWABLE PROJECTS MAY
CONDITIONALLY SELL TIER 1 RENEWABLE ENERGY
CREDITS TO THIRD PARTY MARKET PARTICIPANTS**

I. INTRODUCTION

CleanChoice Energy, Inc. (“CleanChoice” or “Petitioner”) hereby petitions the New York State Public Service Commission (the “Commission”) for a declaratory ruling clarifying that:

- A. owners of large-scale renewable energy projects (“LSR Projects”) may sell or transfer the renewable energy credits (“RECs”)¹ generated by such LSR Projects to third party market participants, provided that the RECs are not under contract with the New York State Energy Research and Development Authority (“NYSERDA”); and
- B. energy service companies (“ESCOs”) may purchase or procure RECs from sellers other than NYSERDA, provided that the transaction is recorded in the New York Generation Tracking System (“NYGATS”).

As explained below, although the ability to bilaterally transfer RECs as set forth herein has long been consistent with Commission precedent, including the Clean Energy Standard (CES)

¹ The RECs referred to in this petition include both Tier 1 RECs as well as any non-Tier 1 RECs generated by qualifying renewable resources that are not currently under contract with NYSERDA.

proceeding,² such ability has been recently cast into doubt in connection with other of the Commission's recent changes to the CES program rules. Accordingly, CleanChoice respectfully requests that the Commission issue a declaratory ruling clarifying that LSR Projects may continue to sell or transfer their RECs that are not under contract with NYSERDA to third party market participants, and that ESCOs may purchase RECs from all available resources, not limited to NYSERDA, including from eligible renewable generators through NYGATS and bilateral contracts.

II. STANDARD OF REVIEW

A petition for declaratory ruling may be sought from the Commission with respect to “the applicability to any person, property, or state of facts of any rule or statute enforceable by the commission or the validity of any such rule” or “whether any action by the commission should be taken pursuant to a rule”³ The Commission may also review a petition for declaratory ruling where “warranted by the public interest.”⁴

A declaratory ruling is warranted here to provide the owners of LSR Projects and potential buyers or transferees, including ESCOs, with clarity that, notwithstanding recent changes in the CES program rules, LSR Projects may continue to sell or transfer their RECs that are not under contract with NYSERDA to third party market participants, and that ESCOs may purchase RECs from all available resources, not limited to NYSERDA, including from eligible renewable generators through NYGATS and bilateral contracts.

² Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*.

³ 16 NYCRR § 8.1 (a) (1) and (2).

⁴ 16 NYCRR § 8.1 (b).

III. THE PETITIONER

CleanChoice is incorporated under the laws of the State of Maryland and authorized to do business in New York. As a registered ESCO, CleanChoice has been operating in New York's competitive retail supply market since 2013 and matches residential customers' energy usage with 100% clean energy resources. As a result of these efforts, CleanChoice customers have avoided over 13 billion pounds of carbon dioxide emissions in the last 10 years.⁵

CleanChoice's commitment to clean energy development is evident from its early participation in the renewable energy market in New York and elsewhere, serving as one of the first and only ESCOs to provide customers with exclusively 100% renewable energy. While CleanChoice no longer operates as a distributed energy resource (DER) provider, having withdrawn the approval for its affiliated entity in 2024, CleanChoice has consistently provided customers the opportunity to support the development of community solar projects across New York through its various products and services.

CleanChoice is in the nascent stages of further diversifying its clean energy portfolio through the planned development or acquisition of several LSR Projects in New York. Given CleanChoice's continued participation in the retail market and certain changes to the REC market, CleanChoice intends to use LSR Projects to meet its ongoing renewable energy obligations. As a result, it is imperative for CleanChoice to ensure its continued compliance with all applicable requirements regarding the transferability of RECs that are not under NYSERDA contract, for which additional clarity is hereby requested.

⁵ Calculated using the United States Environmental Protection Agency's Greenhouse Gas Equivalency Calculator: <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

IV. BACKGROUND

New York Public Service Law (“PSL”) Sections 65 and 66 grant the Commission with authority over both the sale and distribution of natural gas and electricity, specifically over utilities and their distribution services and over ESCOs.⁶ Pursuant to this authority, the Commission adopted an order requiring ESCOs that “offer a renewably sourced product or products” to “ensure that all transactions are recorded in NYGATS and properly associated with their account.”⁷ As the Commission has noted, ESCOs may satisfy their compliance obligations for such products “in the same ways they satisfy their annual CES requirements . . . (1) by purchasing RECs from eligible renewable generators through NYGATS; (2) by purchasing Tier 1 RECs from NYSERDA; (3) by procuring RECs from eligible renewable generators through bilateral contracts; (4) by making Alternative Compliance Payments (ACP) to NYSERDA; or (5) by entering into bundled energy and REC purchase agreements with eligible renewable generators.”⁸

CES Modification Order

On November 9, 2022, NYSERDA petitioned the Commission to transition to a load sharing methodology for determining load-serving entities’ (“LSE”) REC obligations.⁹ As part of the petition, NYSERDA noted that, due to the limited number of available RECs in the market, many LSEs were meeting their compliance obligations through the purchase of ACPs and

⁶ See e.g. PSL § 66-d (2); *Matter of National Energy Marketers Ass. v New York State Pub. Serv. Commn.*, 33 NY3d 336, 351 (2019).

⁷ Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued Dec. 12, 2019) at 80.

⁸ *Id.* at 78.

⁹ Case 15-E-0302, *supra*, NYSERDA CES Transition Petition (filed Nov. 9, 2022).

requested that the Commission eliminate the ability for LSEs to obtain ACPs in future compliance periods.¹⁰

In the CES Modification Order, the Commission (i) confirmed that ACPs cannot be purchased after January 1, 2025, (ii) approved NYSERDA's request to modify the approach for determining LSEs' annual compliance obligation to a load sharing obligation, and (iii) approved NYSERDA's request to procure all Value of Distributed Energy Resource RECs from investor-owned utilities.¹¹ The Commission also authorized the availability of Tier 1 RECS in pre-sale and post-sale NYSERDA auctions to market participants, including the voluntary market comprised of Community Choice Aggregation Administrators and ESCOs, subject to NYSERDA implementation and contracting.

As relevant here, the Commission also included language in the CES Modification Order suggesting that the owners of LSR Projects must sell their RECs only to NYSERDA and that ESCOs must purchase RECs only from NYSERDA.¹² In response to comments from Alliance for Clean Energy New York and Advanced Energy United that expressed concerns about the effects of NYSERDA's requested ruling on "bilateral contracts between LSEs and Tier I REC generators" and that the new approach sought by NYSERDA "negatively affects this nascent market,"¹³ the Commission noted in the CES Modification Order that "there are currently very few purchases of such RECs by LSEs and any shortage of RECs that LSEs encounter have been made up from ACPs," and concluded that "[t]he Commission does not see this potential market issue as critical in the overall design of the program because LSEs typically do not have the resources to pursue

¹⁰ Case 15-E-0302, *supra*, Order Modifying Clean Energy Standard Tier 1 Obligations (issued Apr. 20, 2023) (the "CES Modification Order"), at 4.

¹¹ *Id.* at 5-7.

¹² *See id.* at 1 and 7.

¹³ *Id.* Appendix, at 2.

Power Purchase Agreements or other devices to purchase Tier 1 RECs in the first place.”¹⁴ The Commission then stated that, “if after implementation of this modification there is some evidence of LSE harm *by not having the opportunity to purchase Tier 1 RECs other than from NYSERDA*, that particular aspect of the program can be reviewed during 2026, which is the next scheduled CES program review after the 2025 implementation of this revised Tier 1 program.”¹⁵

The CES Modification Order also includes comments from Azure Mountain that “expressed concern that the Petition does not detail what will happen with Tier 1 RECs that are not purchased by NYSERDA due to a volume of Tier 1 RECs in excess of contracted volumes.”¹⁶ The Commission’s response was that “[t]he Commission does not view this as a likely occurrence due to NYSERDA’s current practice of contracting for 95% of the anticipated generation output and, accordingly, does not expect significant volumes of non-contracted Tier 1 RECs to accrue,” and then added that “*such RECs would remain available to support voluntary REC products.*”¹⁷

This language in the CES Modification Order implies that LSEs may effectively be prohibited from entering into bilateral contracts with REC generators and that ESCOs must procure RECs from only NYSERDA, and yet also states that some RECs not purchased by NYSERDA would remain available to support voluntary REC products. The phrase “by not having the opportunity to purchase Tier 1 RECs other than from NYSERDA” is ambiguous because it does not specify whether the lack of that opportunity is due to a regulatory prohibition or due to market forces. Without clarification from the Commission as to the intent of this language, the resulting

¹⁴ *Id.* at 16.

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* at 17.

¹⁷ *See also* CES Modification Order, at 4 (emphasis added).

uncertainty may create a chilling effect on the growth of the bilateral market, including between now and the next scheduled CES program review in 2026.

CleanChoice and/or its affiliates find themselves in the position of planning to be included in the “very few” purchasers of Tier 1 RECs outside of the NYSERDA contracting practice and part of the remaining 5% of the anticipated generation output that is not under contract with NYSERDA.

While CleanChoice understands that any LSR Project that enters into a contract with NYSERDA is prohibited from selling the RECs generated by the facility, CleanChoice also understands that, before the issuance of the CES Modification Order, facilities that were not contractually obligated to sell RECs to NYSERDA were free to sell RECs to third party market participants and that ESCOs could satisfy their compliance obligations for renewably sourced products through a variety of means, including, but not limited to, purchasing RECs from eligible renewable generators through NYGATS or procuring RECs from eligible renewable generators through bilateral contracts. Specifically, in 2019, the Commission noted that ESCOs are permitted to satisfy their minimum renewable requirement by, among other things, purchasing RECs from eligible renewable generators through NYGATS and bilateral contracts.¹⁸ The CES Modification Order may have inadvertently created doubt as to whether such conditions remain in effect, however.

¹⁸ Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued Dec. 12, 2019), at 78.

V. REQUEST FOR DECLARATORY RULING

For these reasons, CleanChoice respectfully requests the Commission issue a declaratory ruling clarifying the CES Modification Order that LSR Projects that have not contracted with NYSERDA are free to sell or transfer their RECs to third party market participants, including, but not limited to, ESCOs, and that, consistent with the Commission's 2019 Order,¹⁹ ESCOs may purchase RECs from all available resources, not limited to NYSERDA, including from eligible renewable generators through NYGATS and bilateral contracts.

Dated: May 2, 2025
Albany, New York

/s/ John T. McManus
Attorneys for CleanChoice Energy, Inc.
John T. McManus
Anthony P. Luisi
HARRIS BEACH MURTHA CULLINA PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Tel. (518) 427-9700
jmcmanus@harrisbeachmurtha.com
aluisi@harrisbeachmurtha.com

¹⁹ *Id.*