STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS
OF
MULTIPLE INTERVENORS

Dated: August 9, 2021

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PRELIMINARY STATEMENT

Pursuant to the notice published in the May 26, 2021, edition of the *New York State Register* (I.D. No. PSC-21-21-00013-P) and the Notice Concerning Comment Period issued on July 20, 2021, Multiple Intervenors, an unincorporated association of approximately 55 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments to the New York State Public Service Commission ("Commission") on the *Tier 2 Re-sale Implementation Plan Proposal* ("Proposal"), filed by the New York State Energy Research and Development Authority ("NYSERDA") on May 3, 2021 in Case 15-E-0302.[1]

In the Proposal, NYSERDA seeks Commission authorization to hold annual sales of competitive Tier 2 renewable energy certificates ("RECs") purchased through the previous year's solicitations conducted in furtherance of the Clean Energy Standard ("CES"). (Proposal at 1-3.) As proposed, such resales would be limited to load-serving entities ("LSEs") that serve load within New York and currently are required to comply with Commission regulations regarding renewable claims. (*Id.* at 3.) The annual sales event would be initiated by an announcement from NYSERDA on the quantity of Tier 2 RECs available for resale and the price, and the event would last for 14 calendar days after such announcement. (*Id.*)

Multiple Intervenors supports the Proposal because it would reduce the costs of competitive Tier 2 program to customers. Implementation of the Proposal's Tier 2 REC resale process and allocation of proceeds is straightforward: (1) NYSERDA would resell competitive Tier 2 RECs in its inventory to energy service companies ("ESCOs") and Community Choice

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

Aggregations ("CCAs"), and (2) apply the revenues realized to offset program costs (after accounting for obligations to contracted generators and administrative costs). Ultimately, because the competitive Tier 2 REC program requires customers to fund the program (indirectly through LSE REC obligations), a reduction in program costs has the beneficial effect of reducing the financial burden of the program on customers.

Multiple Intervenors has made clear throughout this proceeding that it is very concerned about the cost impacts of the CES.[2] Multiple Intervenors supports policy implementation in furtherance of the State's clean energy goals, but works to ensure that customers are not unduly burdened with excessive and/or unnecessary costs. While such cost-related concerns are relevant at all times, they are especially important now, as customers of all types throughout the State continue to struggle with the economic devastation caused by the COVID-19 pandemic. On top of the numerous recently approved public policy programs, the competitive Tier 2 program potentially adds another $200 million in additional financial strain on captive customers, who already pay billions of dollars toward various public policy initiatives. (*See* MI at 11-14.) NYSERDA's Proposal would help offset the cost of the competitive Tier 2 program by authorizing the resale of RECs.

While Multiple Intervenors supports the Proposal, a few modifications should be made to ensure its success. Multiple Intervenors urges the Commission focus on creating as robust a market as possible to maximize resale revenues to offset program costs. Multiple Intervenors advances two recommendations to effectuate a robust resale market: (1) open eligible participation beyond ESCOs and CCAs; and (2) clarify whether the sale of unsold Tier 2 RECs from prior

[2] *E.g.*, Case 15-E-0302, *supra*, Comments of Multiple Intervenors (dated May 4, 2020). Parenthetical references to these Comments are preceded by the notation, "MI."

compliance years is permitted under the Proposal, and if not, allow such sales to encourage a robust voluntary market.

BACKGROUND

On January 27, 2020, NYSERDA filed a *Petition for Competitive Tier 2 Program for Baseline Renewable Generation* ("Petition") with the Commission. NYSERDA stated the purpose of the Petition was to seek authorization to develop and issue a competitive Tier 2 program, alongside the existing maintenance Tier 2 program, that would more effectively value the contributions of existing renewable generation projects, and to avoid these resources having to seek value and attributes in external markets. (*Id.* at 3) NYSERDA then reintroduced the Petition in the June 18, 2020 Department of Public Service Staff Whitepaper.[3] In filed comments on the proposed Tier 2 Program, various stakeholders supported the idea of reselling the Tier 2 RECs to the voluntary market. (Order, *infra*, at 39-46, 61.)

On October 15, 2020, the Commission issued its Order Adopting Modifications to the Clean Energy Standard ("Order"), significantly expanding the CES program and procurement processes to achieve the clean energy goals set forth in the Climate Leadership and Community Protection Act ("CLCPA"). As part of the Order, the Commission adopted the new competitive Tier 2 REC program. (*Id.* at 70-71.) The competitive Tier 2 REC program is a five-year, $200 million program for which NYSERDA offers three-year REC contracts to existing wind and run-of-river hydropower facilities through competitive solicitations. (*Id.*) Previously, Tier 2 was limited to providing maintenance support only to those existing renewable generation facilities that could demonstrate a financial need. (*Id.*) The program places obligations on LSEs to purchase

[3] Case 15-E-0302, *supra*, White Paper on Clean Energy Standard Procurements to Implement New York's Climate Leadership and Community Protection Act (filed June 18, 2020).

the RECs, and the costs of such purposes then are passed-through to end-use customers in the form of higher prices/rates. (*Id.*) The Commission justified the new competitive Tier 2 program by finding that existing renewable generators are selling their attributes out-of-state at higher rates, thereby jeopardizing New York's ability to meet the CLCPA targets. (*Id.*)

In response to cost-related concerns raised by Multiple Intervenors and others, the Commission ruled that NYSERDA may resell Tier 2 RECs to voluntary purchasers. (*Id.*) The Commission also directed NYSERDA to file an implementation plan detailing how such sales to the voluntary market would be effectuated, and how the proceeds from such sales would impact the payment obligations of the LSEs charged with funding the program. (*Id.*) The Commission emphasized that the Tier 2 resale program would be complementary to the overall Tier 2 REC program to help further stimulate the voluntary market by placing downward pressure on REC prices. (*Id.*) The Order provided that the implementation plan should address the resale process, timing issues, and its interaction with the LSE obligations and reconciliation process. (*Id.*)

<u>The Proposal</u>

On May 1, 2021, NYSERDA filed the Proposal herein to implement annual sales each February (by no later than February 15) of any Tier 2 RECs purchased from the previous year's competitive solicitations. The sale process would last for 14 calendar days after such announcement. (*Id.* at 3) The annual sale event would be initiated by an announcement from NYSERDA on the quantity of Tier 2 RECs available for sale and the sale price. (*Id.*) The inventory of Tier 2 RECs for sale would be based on the number of Tier 2 RECs purchased and held by NYSERDA at the time of the sales announcement. (*Id.*) Notably, the Proposal is unclear about whether RECs from older vintage years would be eligible for resale. Further, NYSERDA's REC inventory may not reflect the total number of RECs ultimately purchased by NYSERDA (*e.g.*, due to delays with invoicing contracted generators). (*Id.*) Once sold, the purchaser would have 15 days after receiving an invoice from NYSERDA to pay for its RECs, otherwise NYSERDA would reserve the right to cancel that order. (*Id.*) NYSERDA's RECs would be transferred to the purchaser via the New York Generation Attributes Tracking System, and would be treated as non-Tier 1, environmental disclosure program ("EDP") eligible RECs. (*Id.*)

NYSERDA proposes to base the Tier 2 resale price on the net weighted average cost of the Tier 2 resale inventory, plus any Commission-approved administrative adder. (*Id.* at 3-4.) The price would equal the total overall cost to NYSERDA to procure its Tier 2 REC inventory divided by the total REC inventory. (*Id.* at 4.) NYSERDA further proposes that only LSEs serving load in New York, who are required to comply with Commission regulations regarding renewable claims, initially would be allowed to participate in the resale process. (*Id.*) In other words, only ESCOs offering an EDP-compliant green product, or CCAs would be eligible to buy Tier 2 RECs at the start. Notwithstanding such proposed limitation, if LSEs do not provide sufficient demand during the Tier 2 REC resales, NYSERDA requests the ability to expand the pool of eligible buyers in the future. (*Id.*) NYSERDA further proposes not to limit or guarantee a minimum number of Tier 2 RECs for sale to ESCOs and CCAs (*e.g.*, through a right of first refusal ["ROFR"]). (*Id.* at 5.)

Finally, NYSERDA proposes that any proceeds from the Tier 2 REC resales be considered resale revenue and be used to offset NYSERDA's financial obligations to Tier 2 contracted generators. (*Id.* at 5-6.) This, in turn, would reduce the total amounts paid by obligated LSEs to fund the competitive Tier 2 program (and the total amounts that ultimately would be borne by customers). The process would be implemented as follows: (1) following a sale, NYSERDA would determine its actual per-MWh cost to purchase Tier 2 RECs for a compliance year, offset by any resale revenues received; (2) the net cost to NYSERDA would be reconciled with the sum of the total load served by LSEs obligated to fund the competitive Tier 2 program, to arrive at a final Tier 2 Rate; (3) the final Tier 2 Rate then would be applied to the total load associated with each obligated LSE, and provide that LSE its final Tier 2 obligation for that compliance year; and lastly, (4) NYSERDA would reconcile payments received from each LSE against the final Tier 2 obligation (obligated LSEs currently pay for the competitive Tier 2 REC program monthly based on an initial Tier 2 Rate calculated by NYSERDA). (*Id.*)

COMMENTS

POINT I

MULTIPLE INTERVENORS GENERALLY SUPPORTS THE PROPOSAL BECAUSE IT WOULD REDUCE COMPETITIVE TIER 2 PROGRAM COMPLIANCE COSTS TO CUSTOMERS

Multiple Intervenors generally supports the Proposal because it is in the best economic interests of customers. As the Commission stated in the Order, the Tier 2 resale program would exert "downward pressure on Tier 2 REC prices." (Order at 70) This is the central issue. Numerous public policy-related programs with significant costs have been approved by the Commission in recent years.[4] Furthermore, additional programs and/or regulations likely will be adopted in the coming years as part of various plans to implement the CLCPA. Multiple Intervenors is very concerned that, if incremental funding obligations continue to be imposed on customers in New York, energy-intensive businesses may increasingly shift production, capital and jobs to other states and countries. Additionally, many of these programs seemingly overlap; for example, the competitive Tier 2 program may support resources that have already received ten or more years of customer-funded payments through the Renewable Portfolio Standard program.

[4] Multiple Intervenors previously detailed a double-digit number of public policy programs that customers are required to fund and, for the sake of brevity, will not do so again here. (*See* MI at 11-13.)

As such, the Commission must take reasonable steps to mitigate and reduce costs to customers to the greatest extent practicable.

Multiple Intervenors contends NYSERDA's Proposal is a reasonable and straightforward mechanism to reduce Tier 2 program costs ultimately borne by customers. NYSERDA nets the program costs of the competitive Tier 2 program, applies this rate to the total load associated with each obligated LSE, and then reconciles payments received from each LSE against the final Tier 2 obligation. Any proceeds from the Tier 2 REC resales first would be used to reconcile NYSERDA's financial obligations to Tier 2 contracted generators, and then be used to reduce the total amounts paid by obligated LSEs to fund the competitive Tier 2 program. In as much as the funds paid by LSEs into the competitive Tier 2 program ultimately are recovered through increased customer prices/rates, any reduction in these costs should result in a corresponding reduction in customer costs. Accordingly, implementation of the Proposal's Tier 2 REC resale process and allocation of proceeds is a straightforward and reasonable method to reduce customer compliance costs and should be adopted. Any further contemplated changes to the Proposal should focus on creating as robust a market as possible to ensure high procurement and revenues to offset program costs to the maximum extent possible.

POINT II

THE RESALE PROGRAM SHOULD NOT BE LIMITED TO ESCOs AND CCAs

In order to encourage the actual repurchase of NYSERDA Tier 2 RECs on the voluntary market and avoid situations where there is insufficient demand, the resale process should to be open to all potential buyers. Expanding the pool of prospective purchasers should increase the likelihood that all available Tier 2 RECs are resold, thereby lowering costs to customers. For example, potential buyers other than ESCOs and CCAs include corporate entities, which may seek to participate in the competitive Tier 2 market to directly procure RECs to satisfy certain corporate goals. A robust voluntary market also is supported by many parties to the proceeding. (Order at 39-46, 61.) Other stakeholders seek to ensure that a high percentage of available RECs are procured. (Order at 69.) Ultimately, the larger the voluntary market, the greater the likelihood of robust procurement, and, therefore, the lower the final cost of the competitive Tier 2 program to customers. To this point, instead of granting NYSERDA the ability to request expansion of the pool of eligible participants, the Commission should expand the pool of prospective REC purchases from its inception. The Commission should seek to avoid what Brookfield Renewables warns against – "a nascent and largely undeveloped voluntary market"[5] – and, instead, create a market to reflect the premium that voluntary buyers are willing to pay for these RECs, thereby increasing revenues to offset program costs to the maximum extent possible.

In this regard, the Commission should look to the recently-approved Tier 4 REC resale program as a model. The Tier 4 REC resale program is a competitively-priced program open to voluntary purchasers, including entities other than ESCOs and CCAs. (Order at 99-101.) Additionally, resale revenue is permitted to reduce LSEs' compliance obligations under the program, thereby reducing costs for customers. (*Id.*) In Tier 4, NYSERDA has the flexibility to contract and resell, as it deems necessary. Although the competitive Tier 2 and Tier 4 programs serve different purposes, the same underlying logic applies for both resale programs, *i.e.*, that a robust voluntary REC resale market will reduce programmatic costs to customers. To the extent NYSERDA wishes to prioritize ESCOs and CCAs in the Tier 2 resale program, use of a ROFR

[5] Case 15-E-0302, *supra*, Comments of Brookfield Renewables (dated May 4, 2021).

mechanism could be appropriate, so long as other prospective purchasers are accorded the opportunity to procure any remaining RECs.[6]

POINT III

THE COMMISSION SHOULD CLARIFY THAT SALES EVENTS SHOULD INCLUDE UNSOLD TIER 2 RECS (IF ANY) FROM PRIOR COMPLIANCE YEARS

Multiple Intervenors hereby seeks clarification as to whether NYSERDA's Tier 2 inventory includes unsold RECs from prior compliance years. The Proposal states that NYSERDA's Tier 2 inventory "would be based upon the number of Tier 2 RECs purchased and held by NYSERDA at the time of the Sales Announcement." (Proposal at 3.) This statement is ambiguous as it leaves open two possibilities: (1) only allow current compliance year RECs to be sold, or, (2) allow any RECs "held by NYSERDA" to be sold, including prior compliance year RECs. Multiple Intervenors contends that NYSERDA should be allowed – if not required – to offer all competitive Tier 2 RECs for resale, including prior compliance year RECs that were not sold.

The Commission should encourage NYSERDA to resell every Tier 2 REC that it purchases in order to maximize the offsetting benefit to customers, encourage a robust voluntary REC market, and prevent unsold RECs from languishing. Along with opening the voluntary market beyond ESCOs and CCAs, NYSERDA should be permitted to offer unsold Tier 2 RECs from prior compliance years. By allowing prior compliance year RECs to be sold during current sale events, NYSERDA should be able to realize increased revenues – if the demand exists – thereby further reducing program costs to customers.

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[6] At this time, it is not clear, however, why any special priority should be accorded to ESCOs and CCAs over other prospective REC purchasers.

Moreover, there is no apparent downside – allowing prior year RECs would maximize revenue by making available all outstanding supply, assuming there is demand (if not, prior year RECs can be retained for future sales). Multiple Intervenors supports according NYSERDA the flexibility to offer previous year RECs where the demand for same is shown to exist. Further, the Commission's price floor – NYSERDA's procurement costs – should prevent REC prices from decreasing due to an increase in supply. Therefore, in order to maximize resale revenue, the Commission should adopt the expansive interpretation, *i.e.*, allowing any prior year RECs to be sold.

CONCLUSION

For the foregoing reasons, Multiple Intervenors urges the Commission to adopt the Proposal and the positions advanced in these Comments.

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Respectfully submitted,

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