

**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
ON WHITE PAPER**

Dated: August 31, 2020

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PRELIMINARY STATEMENT

Pursuant to the Notice of Proposed Rulemaking published in the July 1, 2020 edition of the New York State Register (I.D. No. PSC-26-20-00011-P), and the *Notice Scheduling Technical Conference and Soliciting Comments* (“Notice”) issued by New York State Public Service Commission (“Commission”) on June 30, 2020 in Case 15-E-0302, Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments on the *White Paper on Clean Energy Standard Procurements to Implement New York’s Climate Leadership and Community Protection Act* (“White Paper”), which was issued jointly by New York State Department of Public Service Staff (“Staff”) and the New York State Energy Research and Development Authority (“NYSERDA”) on June 18, 2020.¹

In the White Paper, Staff and NYSERDA seek Commission authorization to modify significantly the current framework of the Clean Energy Standard (“CES”) program so as to achieve certain clean energy and environmental mandates set forth in the recently-enacted Climate Leadership and Community Protection Act (“CLCPA”). Those mandates include: (a) at least 70 percent of statewide load served by renewable energy resources by 2030 (“70x30”); (b) zero emissions in 2040 associated with electric supply; (c) deployment of 6 GW of solar photovoltaic generation by 2025, primarily through the NY-Sun program administered by NYSERDA; (d) deployment of 3 GW of energy storage by 2030; and (e) deployment of at least 9 GW of offshore wind (“OSW”) by 2035.

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

In furtherance of those mandates, the White Paper proposes, *inter alia*, (a) changes to NYSERDA's processes for soliciting renewable energy credit ("REC") contracts with renewable generators participating in Tier 1 of the CES; (b) changes to NYSERDA's OSW REC ("OREC") solicitations; (c) creation of a new Competitive Tier 2 program to subsidize selected, existing renewable generation in New York; (d) creation of a new Tier 4 of the CES to foster renewable generation in New York City; (e) modifications to existing rules for repowered generators to qualify for Tier 1 contracts; and (f) miscellaneous changes to the administrative framework of the CES.

By these Comments, Multiple Intervenors is not challenging the goals of the CLCPA, nor is it seeking to oppose reasonable actions by the Commission in furtherance of the aforementioned legislative mandates, provided such actions are economic and reasonable. Rather, as expressed on numerous occasions in this proceeding, Multiple Intervenors' primary concern is that, in establishing and implementing policies related to the State's clean energy mandates, the Commission must take care to ensure that customers (and especially price-sensitive, energy-intensive consumers) are not burdened with excessive and/or unnecessary costs. Importantly, the costs associated with Commission policies have to be considered in the context of the benefits inuring therefrom, and that customers are paying their fair share of costs commensurate with the benefits that they receive. Further, the costs to customers of various Commission policies and initiatives need to be evaluated not only on a case-by-case basis, but also in the aggregate. Customers simply cannot afford to fund every program that arguably can be justified in isolation. Such cost-related concerns are present and relevant at all times, but are of extraordinary importance now, as customers of all types throughout New York grapple with the devastating economic impacts of the ongoing COVID-19 public health crisis.

Multiple Intervenors previously submitted Preliminary Comments on the White Paper, focusing specifically on the proposal therein to create a new Tier 4.² In its Preliminary Comments, Multiple Intervenors did not oppose efforts to increase renewable resources in New York City, but instead disagreed that the costs associated with such a geographically-targeted effort should be socialized on a load-ratio basis statewide. Multiple Intervenors hereby incorporates its Preliminary Comments herein, and further expands on the need for the Commission to properly allocate any incremental costs associated with the proposed Tier 4 program. Multiple Intervenors also comments herein on other issues raised by the White Paper, including the proposed Competitive Tier 2 program, as well as proposed changes to NYSERDA's Tier 1 and OREC solicitations.³

COMMENTS

POINT I

THE COSTS OF A TIER 4 PROGRAM SHOULD NOT BE SOCIALIZED ON A LOAD-RATIO BASIS STATEWIDE

Noting a disparity in the availability of zero-emission generation between Upstate and Downstate New York (*i.e.*, Downstate New York has much less renewable generation, and relies primarily on local, fossil fuel-fired generation), the White Paper proposes a new Tier 4 of the CES to facilitate renewable generation into New York City. As proposed, the Tier 4 program

² Case 15-E-0302, *supra*, Preliminary Comments of Multiple Intervenors (filed July 24, 2020).

³ The Notice requested stakeholder responses to specific questions about various proposals in the White Paper. Although these Comments address the White Paper generally, they do not specifically answer each question presented in the Notice. Multiple Intervenors' election to refrain from responding to selected questions should not be construed as advocating positions either in support of or opposition to proposals advanced in the White Paper.

would operate similarly to Tier 1, in that Tier 4 projects would contract with NYSERDA for the sale and purchase of Tier 4 RECs, which then would be sold by NYSERDA to load-serving entities (“LSEs”) for mandatory Tier 4 compliance purposes. Notably, the White Paper proposes that all LSEs in New York be subject to a new Tier 4 compliance obligation in proportion to their share of statewide load, as opposed to load within New York City.

The White Paper further proposes, *inter alia*, that: (a) any renewables procured through the proposed Tier 4 program would reduce the amount that has to be procured through Tier 1; and (b) the cost of a Tier 4 REC would be benchmarked at prevailing Tier 1 REC prices “for generation projects that do not directly pay the cost of new transmission facilities, and therefore bear transmission costs comparable to projects typically selected under Tier 1.”⁴ Multiple Intervenors interprets this proposal to mean that: (a) Tier 4 RECs produced by generation projects located in New York City would be capped at Tier 1 REC prices and count toward the 70x30 goal and, therefore, would impose no incremental costs on customers; and (b) Tier 4 RECs relying on new transmission for delivery into New York City would not be subject to the same – or perhaps any – price cap and, thus, could impose incremental costs on customers of an unknown magnitude.⁵

Multiple Intervenors has no objections to efforts to increase New York City’s reliance on renewable generation, or the proposed Tier 4 in concept. Significantly, however, Multiple Intervenors disagrees that any and all incremental costs associated with Tier 4 should be allocated on a load-ratio basis statewide. Customers throughout New York already are obligated to pay billions of dollars to increase the delivery of renewable power to the Downstate region,

⁴ White Paper at 52.

⁵ The White Paper does not contain any projections of the potential incremental costs that could be imposed on customers as a result of the proposed Tier 4.

including but not limited to New York City, in the form of increased high-voltage transmission capacity and OSW generation, both of which are under development. If, *arguendo*, a new, special tier of the CES is needed to further promote renewable generation in a specific region of the State, such effort should be funded primarily – if not exclusively – by the customers in that region. Here, the Tier 4 program is designed expressly to facilitate renewables into a very-specific geographic region (New York City). It then follows that the incremental costs of Tier 4, if any, should be borne in whole – or very large part – by customers located in that region (*i.e.*, the primary beneficiaries of Tier 4).

To be clear, Multiple Intervenors is not opposed to the concept of a Tier 4, or efforts to increase renewables in New York City and/or Downstate in general. The legislative mandates of the CLCPA are statewide goals, and renewables developed anywhere in the State will contribute toward achievement of those mandates. Nonetheless, the majority of the benefits associated with such targeted renewables inure to New York City or Downstate customers, such as reductions to local emissions and, presumably, lower wholesale energy prices.

Moreover, the CLCPA does not explicitly require that a certain amount of renewable generation must be located in Downstate New York. 70x30 is a statewide goal and, thus, a renewable project developed in Upstate New York contributes essentially the same amount toward the 70x30 goal as an identical renewable project developed in Downstate New York. The objective, therefore, should be to satisfy the 70x30 goal at the lowest cost to customers, consistent with maintaining reliability. If, *arguendo*, a regional target also is desired, then that region should bear all or most of any incremental costs associated therewith.

If, *arguendo*, the Commission agrees with Staff and NYSERDA that a Tier 4 program should be the responsibility of all LSEs statewide, the amount paid by customers

located outside of New York City nonetheless should be limited. Multiple Intervenors hereby advances two potential alternatives for allocating Tier 4 costs across the State.

First, Multiple Intervenors asserts that a cap on the Tier 4 REC price at a benchmark based on prevailing Tier 1 REC prices would be appropriate for Upstate customers, and would mitigate the potential inequitable subsidization by Upstate customers of Downstate renewables developed through the Tier 4 program. In this case, an Upstate customer should pay no more for a Downstate renewable facility than it otherwise would have paid for an identical renewable facility developed in Upstate New York, both of which contribute equally to the 70x30 goal. Put another way, LSEs serving load outside of New York City (and by extension, their customers) should pay no more for a Tier 4 REC than they otherwise would have paid for a Tier 1 REC. To the extent additional subsidies are needed beyond the price of a Tier 1 REC to support the construction and operation of that Downstate renewable facility, or the delivery of renewable energy to New York City, those incremental costs should be borne solely by Downstate customers.

Second, if a Tier 4 project incurs incremental transmission costs (*e.g.*, the Tier 4 project is located Upstate, but requires new transmission capacity to deliver its renewable energy into New York City), those costs should be allocated to customers in an equitable manner, based on cost causation and beneficiaries pay principles. Multiple Intervenors notes that the cost allocation methodology approved previously by the Commission as part of its Public Policy Transmission Need (“PPTN”) process identifying a need for AC transmission capacity from Upstate to Downstate New York, is reasonable and easily adaptable to the Tier 4 program.⁶

⁶ See Case 12-T-0502 *et al.*, *Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades*, Order Establishing Modified Procures for Comparative Evaluation (issued December 16, 2014) at 10, Order Finding Transmission Needs Driven By Public Policy Requirements (issued December 17, 2015) at 51-53, and Order

Pursuant to the Commission’s PPTN cost allocation, 75 percent of the transmission project’s costs should be allocated to the economic beneficiaries thereof, with the remaining 25 percent socialized by all customers on a load ratio basis to reflect the existence of certain statewide associated with the transmission project.⁷ This allocation methodology would account for statewide benefits associated with new transmission built to accommodate Tier 4 projects, while simultaneously recognizing that the majority of benefits associated with such a transmission project would inure to Downstate customers.

For the foregoing reasons, Multiple Intervenors does not oppose the proposed Tier 4, but urges the Commission to reject the White Paper proposal that all LSEs statewide be subject to a Tier 4 obligation on a load-ratio basis. In the alternative, if the Commission determines that all LSEs should be required to pay for the Tier 4 program, the incremental costs associated therewith should be allocated in an equitable manner that recognizes and reflects the regional aspect of the program, rather than simply socializing all costs on a statewide basis.

POINT II

THE COMMISSION SHOULD REJECT THE PROPOSED COMPETITIVE TIER 2 PROGRAM

In the White Paper and the Notice, the Commission seeks further stakeholder feedback on a petition filed by NYSERDA on January 24, 2020 proposing a Competitive Tier 2 Program to ensure that baseline renewable generation remains in New York (“Tier 2 Petition”). Specifically, the Commission seeks feedback on arguments advanced by the New York Power Authority (“NYPA”) that its hydroelectric facilities should be deemed Tier 2-eligible, and that

Addressing Public Policy Transmission Need for AC Transmission Upgrades (issued January 24, 2017) at 19-21.

⁷ See *id.*

NYPA also should be permitted to utilize those facilities to self-supply Tier 2 RECs as part of its voluntary compliance with a Competitive Tier 2 program (if approved).⁸

Multiple Intervenors previously submitted comments on the proposed Competitive Tier 2 Program.⁹ In its Tier 2 Comments, Multiple Intervenors specifically opposed the adoption of a Competitive Tier 2 program that would provide a windfall to existing generators, particularly those that already previously have received significant customer subsidies under ten-year Renewable Portfolio Standard (“RPS”) contracts. Pursuant to the RPS, customers were forced to pay substantial surcharges to subsidize renewable generation facilities that otherwise would not have been economic, and to do so for lengthy periods of time (*i.e.*, up to ten years or longer). Such subsidies were intended to be temporary, however, and not endure in perpetuity. Indeed, when the Commission first established the RPS in 2004, it recognized the need to promote a sustainable, competitive market for renewables, otherwise its initiative “*could result in an industry that is perpetually dependent upon government-mandated subsidies.*”¹⁰ Inasmuch as customers already subsidized renewable resources under the RPS, those resources should not be made eligible for even more customer subsidies under the proposed Tier 2. Indeed, for the reasons advanced previously in this proceeding by Multiple Intervenors, proposals to expand Tier 2 beyond limited assistance to those facilities demonstrating financial distress should be rejected.

⁸ NYPA’s positions are set forth in its comments on the Tier 2 Petition. See Case 15-E-0302, *supra*, Comments of the New York Power Authority (filed May 4, 2020).

⁹ See Case 15-E-0302, *supra*, Comments of Multiple Intervenors (filed May 4, 2020) (“Tier 2 Comments”).

¹⁰ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004) at 12 (emphasis added).

However, if, *arguendo*, the Competitive Tier 2 program is approved over Multiple Intervenors' opposition, the Commission essentially would be authorizing previously-subsidized projects to continue receiving customer subsidies. This windfall to existing generators is exacerbated by the fact that participation in the Competitive Tier 2 program would not be predicated on a demonstrable need for financial assistance – a key requirement for receiving maintenance under the existing Tier 2 component of the CES.

Multiple Intervenors hereby incorporates into these Comments the positions advanced thereby in its Tier 2 Comments, and reiterates its opposition to a Competitive Tier 2 program, especially with respect to facilities that already have received customer-funded subsidies for ten years or longer under the RPS. That notwithstanding, in the event that the Commission decides to adopt a Competitive Tier 2 program over its objections, then Multiple Intervenors supports NYPA's proposal that it be allowed to self-supply Tier 2 RECs from its own hydropower facilities. NYPA customers already fund the Authority's voluntary renewables obligations through their contracts for NYPA power (for example, customers with NYPA allocations under the Replacement Power and Expansion Power programs pay for NYPA's voluntary compliance with the Zero Emissions Credit program), and they should not be required to also fund a Competitive Tier 2 program. Despite approximately 15 years of mandated, customer-funded subsidies of renewable generation facilities, NYPA has been – and remains – by far the largest owner/operator of renewable generation in the State.

Moreover, if NYPA's facilities are not eligible for the Competitive Tier 2 program, the Authority could be placed at a competitive disadvantage relative to those generators that do qualify for Tier 2, and any economic benefits to customers associated with low-cost NYPA hydropower could be eroded. As an example, if a non-NYPA generator successfully acquires a Competitive Tier 2 REC contract from NYSERDA, the subsidies received therefrom

could allow the generator to bid lower – even negative – prices into wholesale energy markets. In such an instance, a NYPA facility that is ineligible to receive similar subsidies may not be able to compete against such low prices, and could be at risk of being curtailed if its bids do not clear the market. Allowing NYPA to self-supply any Tier 2 obligations at least minimizes some of the competitive disadvantages that NYPA would experience if other existing renewable generation projects were to become eligible for new Tier 2 subsidies.¹¹ The Commission should be very leery about subsidizing renewable resources – new or existing – such that customer-subsidized generation displaces, and causes periodic curtailments of, non-subsidized generation.

For the foregoing reasons, Multiple Intervenors opposes the proposed Competitive Tier 2 program, and recommends that the Commission reject it. That notwithstanding, if, *arguendo*, the Commission decides to adopt the Competitive Tier 2 program, then it also should rule that NYPA be eligible to self-supply Tier 2 RECs from its existing hydropower resources for voluntary compliance purposes.

POINT III

NYSERDA SHOULD HAVE FLEXIBILITY TO PROCURE RENEWABLES AT LEAST COST TO CUSTOMERS

The White Paper proposes that NYSERDA be provided flexibility to administer its Tier 1 REC and OREC solicitations, for example, by eliminating annual minimum procurement targets and moving to an *ad hoc* procurements schedule.

Multiple Intervenors generally supports such flexibility for NYSERDA to procure renewable resources toward meeting the CLCPA's goals, which could help to reduce the costs of

¹¹ Multiple Intervenors understands that other than a self-supply option, NYPA is not seeking to participate in the proposed expansion of Tier 2, and Multiple Intervenors would not support such participation at this time.

the CES, assuming NYSERDA exercises such flexibility judiciously. Notably, if the requested flexibility is granted, NYSERDA should carefully monitor and adjust its procurement activities as needed to respond to market signals (*i.e.*, NYSERDA should strive to procure more CES resources when REC prices are low, and less when REC prices are high), subject to active oversight by the Commission and Staff. The CLCPA’s goals are ambitious, and will require a significant amount of new renewable development in the coming years – with a significant price tag associated therewith. To the extent that NYSERDA can administer the CES in a way that maximizes value and minimizes costs to customers, it should do so.

Multiple Intervenors further cautions that moving from annual solicitation schedules to *ad hoc* procurements could create increased volatility in the year-to-year costs to customers, particularly energy-intensive customers, many of which are capable of shifting production and future capital investments to other states and countries. Thus, the Commission – and NYSERDA if accorded increased flexibility – need to remain focused on minimizing customer rate impacts associated with the CES.

Finally, the White Paper proposes that the framework for NYSERDA to evaluate bids for its Tier 1 REC solicitations be modified to place greater emphasis on project viability and the potential interactive effects caused by the increasing penetration of renewable energy resources on the grid. The White Paper also proposes that NYSERDA be authorized to reject a proposal outright upon a unanimous determination by the Technical Evaluation Panel (“TEP”) that the project is not presently viable. Multiple Intervenors agrees that project viability is an important component of Tier 1 solicitations. It makes little sense to pursue projects that have little chance of achieving commercial operations. Nonetheless, as noted above, NYSERDA’s main goal should be to maximize the performance of its solicitations at the lowest cost to customers. To the extent that the TEP rejects a proposal for viability reasons, Multiple

Intervenors recommends that NYSERDA be required to clearly articulate its findings and conclusions for why the proposal was rejected, particularly if the proposal potentially was a cost-effective solution to achieving the CLCPA goals.

CONCLUSION

For the foregoing reasons, Multiple Intervenors urges the Commission to adopt the recommendations set forth in these Comments.

Dated: August 31, 2020
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Respectfully submitted,

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