STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 16, 2017

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, abstaining

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

ORDER APPROVING PHASE 1 IMPLEMENTATION PLAN

(Issued and Effective February 22, 2017)

BY THE COMMISSION:

INTRODUCTION

In response to directives regarding program implementation in the Commission's August 1, 2016 "Order Adopting a Clean Energy Standard" in this proceeding (the CES Order), Department of Public Service Staff (Staff) and the New York State Energy Research and Development Authority (NYSERDA) filed its Phase 1 Implementation Plan Proposal (Phase 1 Proposal) on October 31, 2016.[1] The Phase 1 Proposal addresses details on eligibility and certification of renewable energy resources to qualify for Tier 1 Renewable Energy Credits (Tier 1

[1] On September 30, 2016, Staff filed a single issue implementation proposal, which outlined the framework for submission of revised tariff filings by the utilities to recover costs incurred in compliance with the CES Order. That implementation proposal is the subject of a separate order in this proceeding.

RECs); filing requirements and processes to support certain eligible resources under the maintenance Tier 2 identified in the CES Order; an approach to long-term procurements of Tier 1 RECs administered by NYSERDA including procurement design and bid evaluation criteria; demonstration of compliance by Load Serving Entities (LSEs) for both the Renewable Energy Standard (RES) and the Zero-Emission Credit (ZEC) requirements; and other reporting requirements by NYSERDA provided by the automated New York Generation Attribute Tracking System (NYGATS). This first major implementation proposal intends to provide market participants with the necessary CES program requirements to participate in Tier 1 REC procurements in 2017 and for demonstrating compliance with the CES mandate for the 2017 program period.

For Tier 1, the Phase 1 Proposal provides detailed eligibility criteria for owners and developers of new RES resources. The CES Order adopted the technologies used for the Renewable Portfolio Standard Main Tier program (RPS program) with some modifications on size, geographic location, energy delivery requirements and date of first commercial operation.[2] Resources eligible to produce Tier 1 RECs will be resources that came into operation after January 1, 2015, and that meet the eligibility criteria set forth in Appendix A of the CES Order.

The Phase 1 Proposal also includes Tier 1 eligibility criteria for upgraded, return-to-service, repowered, and relocated facilities that currently exist.[3] For upgrades, a material investment in new generating equipment is required resulting in a minimum of a 5 percent increase in generation

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[2] Case 15-E-0302, et al., Clean Energy Standard, Order Adopting a Clean Energy Standard, (issued August 1, 2016) Appendix A.

[3] A discussion of each of these categories is provided in Section 2.1 (b) pp. 2-4 of the Plan.

production, based on a three year historic production baseline. For a repowered facility, the main generator must: have operated for the length of its useful life before replacement on-site; demonstrate an increased generation production of at least 15 percent; and demonstrate that at least 80 percent of the tax basis from the completed repowered facility is derived from capital expenditures made on or after January 1, 2015 (tax basis criteria). A relocated facility will be considered eligible for Tier 1 if it can demonstrate that it meets all other eligibility requirements and that it was used on or before January 1, 2015 to generate electrical energy outside of both the New York Independent System Operator (NYISO) Control Area and adjacent Control Areas. Finally, a return-to-service facility must demonstrate 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 described further below.

Regarding the eligibility of net-metered distributed energy resources (DER), the Phase 1 Proposal notes that there is currently a proceeding before the Commission that is considering new tariffs for DER that may impact their eligibility to offer Tier 1 RECs to NYSERDA through long-term contracts.[4] Also, in order to track all DER in the State that may not generate Tier 1 eligible RECs but will nevertheless contribute towards the overall CES goal, the Phase 1 Proposal recommends that the utilities register in NYGATS all the electrically interconnected DER in their respective service territory, as well as, the monthly generation associated with load modifiers (e.g. hydro

[4] Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Staff Report and Recommendations in the Value of Distributed Energy Resources Proceeding (October 27, 2016)(VDER Proceeding).

less than 1 MW) for the purpose of NYGATS tracking and settlement.

The Phase 1 Proposal proposes that NYSERDA develop a streamlined certification process modeled on the RPS Main Tier and make available on its CES web interface a certification application, which will result in issuance by NYSERDA of a statement of qualification (SoQ) of Tier 1 eligibility. The certification application will require that each facility submit materials sufficient to demonstrate its fulfillment of all program eligibility requirements including commercial operation.

The Phase 1 Proposal also proposes a provisional certification requirement to affirm that a proposed generation facility could meet the RES eligibility criteria and, therefore, participate in NYSERDA's RES procurements. The application, approval and on-going verification processes are all modeled on criteria used in the RPS program.

As the CES Order identified, a long-term procurement process for Tier 1 RECs is needed to support the financing of new renewable facilities that will supply Tier 1 RECs to load serving entities to meet their RES obligation. The Phase 1 Proposal suggests that long-term procurements continue to be administered by NYSERDA modeled on the RPS program method of competitively selecting bids for fixed-price REC contracts, with procurements held no less than once per year.[5] The proposed maximum contract duration to supply Tier 1 RECs from these facilities is 20 years, subject to the useful life of each facility, based on its resource type.

Bidders will be required to provide one bid price in nominal dollars which represents a single fixed production payment, expressed in dollars per megawatt-hour ($/MWh). Each

[5] The first procurement under the RES is scheduled for April 2017.

MWh will apply to one Tier 1 REC that will be recorded in NYGATS and offered as performance throughout the term of the contract with NYSERDA. The Phase 1 Proposal provides for a two-step bid evaluation process, with additional criteria designed to help ensure that projects become operational. As defined in the CES Order, NYSERDA will assume the primary responsibility for issuing and executing each solicitation. NYSERDA and Staff will execute all Step One eligibility determination activities described below but will solicit the expertise of a Technical Evaluation Panel (TEP), to assist NYSERDA and Staff, in the Step Two evaluation process.

Step One provides potential bidders an opportunity to: demonstrate a well-conceived and thoroughly studied renewable generation project concept; have completed a fatal flaw analysis; started key regulatory processes (such as interconnection and permitting); have a level of site control; have engaged investors; and be fully aware of all of the requirements needed to bring a generation facility to commercial operation. Detailed guidance on demonstrating Step One criteria is provided in the Phase 1 Proposal and would be administered by combining the completion of a self-certified checklist with simultaneous submission of supporting documents that NYSERDA and Staff can use to validate the self-certification.

Step Two consists of the criteria used to evaluate bids against each other. The Phase 1 Proposal incorporates additional factors into the 70 percent price weighting and 30 percent economic development weighting previously used in evaluating bids in the RPS program. The CES Order required Staff and NYSERDA to consider additional criteria including: project viability; expected time frame between bid acceptance and operation; diversity of resources in the overall portfolio;

diversity of ownership; relevant developer experience; and non-cost economic benefits.[6]

In this regard, the Phase 1 Proposal maintains the relative weight of price at 70 percent but reduces the economic benefit factor from 30 percent to 10 percent in order to consider additional criteria in the scoring of bids. The proposed additional criteria are: a minimal level of project development maturity thereby increasing the proportion of contracted resources that actually become operational. The scoring of bids will be considered based on the criteria and weighting below.

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%)

After conducting the scoring for the criteria above, the TEP will develop a preliminary ranking of generation facilities based on each facility's score with a tentative cut-off line based on the solicitation's MWh procurement target. The TEP will then apply a portfolio risk assessment for the preliminary award group and consider factors including diversity of resources and ownership, and timeframe to operation before making a final selection. The Phase 1 Proposal provides that facilities will have two years from the date of contract to reach commercial operation with the ability to request four six-month extensions, each secured through either posting of additional security or entering into an interconnection agreement.

[6] CES Order, pp 115-116.

The Phase 1 Proposal suggests that NYSERDA continue to use the confidential maximum acceptable bid price (MABP) in all solicitations, which will be established for each solicitation in consultation with DPS Staff. In order to receive payments, a contracted generation facility must register with NYGATS to create Tier 1 RECs. NYSERDA will make payments for those RECs based on monthly invoicing upon transfer to NYSERDA's designated NYGATS account.

The Phase 1 Proposal also includes eligibility criteria addressed in the CES Order on Tier 2 Maintenance, which is available to at-risk baseline facilities which, if not for financial support, are demonstrated to be economically unviable and will cease operation. Tier 2 Maintenance would only apply to 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 energy output must have been originally included in New York's baseline of renewable resources as of that date.

Finally, the Phase 1 Proposal provides details on LSE compliance. LSEs must demonstrate compliance with the CES's RES Tier 1 and ZEC requirements for each compliance period. The RES compliance period is January 1 through December 31. The ZEC compliance period is April 1 through March 31. Tracking and reporting related to LSE compliance will be accomplished through NYGATS, which will generate reports on ZECs and Tier 1 RECs held in LSE accounts that must be submitted to NYSERDA for demonstration of compliance. LSEs that elect to make an

Alternative Compliance Payment (ACP)[7] to satisfy all or part of their RES obligation will be required to report those transactions as an attachment to the NYGATS compliance report. NYSERDA as the CES administrator will have access to each LSE's account for compliance verification purposes.

The Phase 1 Proposal contemplates that NYSERDA and LSEs be allowed to bank Tier 1 RECs for two future compliance periods and provides several conditions for banking and using banked RECs for future compliance periods. One such condition proposes that Tier 1 RECs banked in NYGATS in any one year not exceed 30 percent of the RECs needed by the LSE for compliance in the year they were generated.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on November 16, 2016 [SAPA No. 15-E-0302SP25]. The time for submission of comments pursuant to the Notices expired on January 3, 2017. However, in response to multiple requests, the deadline for submission of comments was extended to January 10, 2017 by Notice of the Secretary issued on December 29, 2016.

Those submitting comments include: ACENY, American Wind Energy Association, Advanced Energy Economy Institute and Northeast Clean Energy Council (Renewable Energy Parties); Bloom Energy Association (Bloom); Brookfield Renewable (Brookfield); City of New York; Community Energy; Constellation NewEnergy, Inc. (Constellation); Cypress Creek Renewables (Cypress Creek);

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[7] An LSE has two options for compliance. It can purchase Tier 1 RECs or make an alternative compliance payment (ACP). For 2017, the ACP is set at a price 10% above the 2017 Tier 1 REC price.

Environmental Advocates of New York, Natural Resources Defense Council, Pace Energy and Climate Center, Sierra Club and the Nature Conservancy (Environmental Groups); Environmental Marketers Association (EMA); Gravity Renewables (Gravity); H.Q. Energy Services (HQ); Impacted ESCO Coalition (ESCO Coalition); Independent Powers Producers of New York (IPPNY); Invenergy, LLC (Invenergy); Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas & Electric Corporation(Joint Utilities); National Fuel Cell Research Center; New York Battery and Energy Storage Technology Consortium (NYBEST); New York BioEnergy Association; New York Independent System Operator (NYISO); New York Offshore Wind Alliance (OSW Alliance); Noble Environmental Corporation (Noble); PSEG-Long Island (PSEG-LI); ReEnergy Holdings, LLC (ReEnergy) Solar Energy Industries Association and New York Solar Energy Industries Association (SEIA/NYSEIA); SRECTrade Inc.; and the State of New York Department of State Utility Intervention Unit (UIU). Comments received are summarized by topic below.

TIER 1 ELIGIBILE RESOURCES

Upgrades

Brookfield disagrees with the required 5 percent increase in annual energy production for upgraded facilities, claiming that this requirement creates barriers to pursing viable upgrades that were once eligible in the RPS program. It notes that runner replacements in the turbine assembly were eligible for Main Tier contracts in the RPS program and that the same upgrade would be unlikely to meet Tier 1 eligibility since the increase in annual production would not meet the 5 percent threshold.

Brookfield also recommends that the proposed three year average historic generation output period, which incremental generation would be measured by, be increased to 10 years since variances for hydro facilities can be considerable on a year by year basis. As an alternative, Brookfield recommends that resources be given an option to be measured either on a 3 year or 10 year historic period.

HQ requests that eligibility for incremental production associated with upgrades be on a per unit basis and not the entire facility since a single generation facility can contain multiple units. It also recommends two additional options to demonstrate upgrades: i) an increase in a minimum of 10 GWh of increased annual energy production under normal operating conditions; or ii) an increase to the generator’s nameplate capacity of at least 5 MW. HQ states that allowing these additional options will incent cost effective upgrades at already efficient units where a 5 percent generation increase may be unachievable due to historically high production. It also suggests the use of a hydrologists report to help demonstrate incremental upgrades of hydroelectric facilities.

HQ also states that the proposal to measure incremental generation against an annual historic average will prevent any upgraded facility from creating Tier 1 RECs until the current calendar year has ended and recommends RECs from upgraded units be created quarterly based on a historic production level for each quarter.

Discussion

All upgrades need to demonstrate an actual increase in production from an historic baseline that has been well documented and vetted by experts knowledgeable in hydroelectric dispatch and operations. The addition of capacity alone is not an indication that the facility will produce more energy since water flow can be diverted to other units, or restricted, in the case of a hydroelectric facility. Upgrades were also eligible in the RPS program so NYSERDA has considerable experience in deciphering and applying the appropriate criteria for each specific technology. In reviewing information on historic baseline generation, the request of Brookfield and HQ to consider a 10-year baseline for hydroelectric operations is reasonable and will be adopted. NYSERDA, therefore, will be required to consider the longer 10 year baseline period, which allows hydroelectric facilities to more effectively demonstrate the normal operating conditions of the facility, under normal resource availability, relative to the weather-normalized annual production.

HQ's request to allow upgrades to specific units within a larger facility is also reasonable, however, the minimum 5 percent threshold criteria for demonstrating increased production will remain. It is important that eligible upgrades involve investments to the plant are done specifically to increase generation output and are not done as an O&M investment that may result in a minor increase to the efficiency of a plant. NYSERDA will also have the ability to consult with independent experts for review of upgrades for specific technologies and their specific operating characteristics to confirm and verify the incremental production. Lastly, NYSERDA shall clarify in the final Phase 1 Plan that the incremental production that is deemed eligible for Tier 1 RECs need not wait until an annual period has passed to be measured against the historic production for owners to begin receiving Tier 1 REC payments.

Repowering and Relocated Facilities

The Renewable Energy Parties suggest revisions to the repowering criteria for assessing hydroelectric resources. It states that replacement of a dam, for example, is expensive and just as vital to the operation of the project as the prime mover. It also states that while turbines are long-lived, the 50-year useful-life requirement, noted in Table 2 of the Phase 1 Proposal, is extreme and, therefore, it may be more appropriate to rely solely on the tax basis criteria.

Gravity states that the criteria for repowering is overly restrictive and favors some technologies over others because of the difference in the useful-life criteria of technologies. It recommends that other factors be considered that either improve the facility's operations or longevity. It also states that the tax basis criteria is arbitrary and may not include other substantial assets pertinent to the facility. Gravity asks for further clarification on the bounds to which the taxable basis is applied.

Invenergy states that the definition of wind in Table 1 of the Phase 1 Proposal should be clarified to indicate whether the tower is included in the list of components that define the prime-mover. Cypress Creek requests that the useful-life of solar photovoltaic (PV) be corrected to 30 or 35 years, the asset life used by engineers and in project financing.

The Joint Utilities oppose the repowering option and believe it is inconsistent with the goals of the CES and could substantially increase the total costs of the CES program, a factor not considered in the CES Cost Study. The Joint Utilities state that repowering could have unintended consequences by incenting owners of existing renewable projects to discard resources that have not reached the true end of their useful life by encouraging them to repower and receive additional compensation through a second NYSERDA REC contract and at a high cost to New York customers with just 15 percent incremental renewable energy counting towards the CES goal. They recommend that if repowering is considered, production of Tier 1 RECS be limited to the incremental capacity improvements. The Joint Utilities also note that allowing a repowering option now is premature. They recommend that the topic be subject to additional review and comment by stakeholders to consider factors such as ensuring customers do not pay twice for common infrastructure.

The Joint Utilities also state that consideration should be given to adopting an enhanced "maintenance tier" type of framework for repowered facilities, where developers earn a regulated rate of return for the new investment and are not allowed to receive "market-rate" Tier 1 REC payments for production from a facility that may have a substantial useful life remaining with common elements that can continue to be utilized. Finally, the Joint Utilities recommend that consideration be given to reexamining utility ownership as a way to avoid having third parties capture and resell residual value at the expense of customers.

The UIU notes that the Phase 1 Proposal does not require relocated facilities to meet explicit efficiency requirements akin to those proposed for upgraded and repowered facilities. It notes that the absence of an improved efficiency requirement could incent prospective investors to import older, less efficient units from out of state rather than construct new or upgraded higher efficiency units. It therefore, recommends that an efficiency standard be explicitly required for relocated facilities.

Discussion

The repowering option for older vintage facilities that predated the RPS program (pre-2003 resources) appears as a reasonable solution to put older facilities back into production, especially in instances when the generating components have met their useful life and may be completely decommissioned. The Joint Utilities, however, raise important points regarding facilities that have already received an RPS contract (pre-2015 resources) where repowering may not be in the best interest of ratepayers if there is value in operating the facility beyond the industry standard useful-life. Therefore, the Commission will not allow repowered facilities to be eligible for Tier 1 at this time. However, Staff is directed to include the topic of repowering in its recommendations to the Commission related to the cost effective retention of baseline resources, which will be due within 180 days from the issuance of this order.[8]

The UIU makes a reasonable request regarding the desire of efficient facilities that are relocated to the State. However, such a requirement would be difficult to impose because there is no baseline for which to measure these units. Any new energy production from renewable resources that meet all the repowering and other eligibility requirements for Tier 1 production is welcome to help meet the CES goals.

Distributed Energy Resources

The Renewable Energy Parties state that further clarification is needed on the eligibility of DER to participate in the NYSERDA Tier 1 REC procurements and that no changes from the CES Order on eligibility with respect to DER should occur until the issues are resolved in the VDER proceeding. IPPNY

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[8] Case 15-E-0302, supra, Order On Petitions For Rehearing.

requests clarification on how DER projects funded by the NY-Sun and other customer-sited tier programs under the RPS will be counted toward the CES goal.

Cypress Creek states that RECs from DER resources that are recipients of net-metering and the phase one VDER tariff that is proposed in Staff’s White Paper in the VDER proceeding be retained and retired by either the project owner or customer and, therefore, not count toward the mandated Tier 1 obligations of the LSEs. Instead, it remarks, the RECs from these projects should be recognized as contributing to the overall CES goal by reducing future LSE compliance requirements.

The National Fuel Cell Research Center and Bloom Energy recommends that the Commission continue to include eligibility of net-metered DER resources in the Tier 1 REC solicitations unless and until the VDER proceeding has established appropriately structured REV market signals. Bloom further states that the procurement process should be designed to maximize actual project development and minimize paperwork and that the Phase 1 Proposal should not be approved absent inclusion of additional factors, especially those that will drive near term project development into the downstate region. SRECTrade states that DER should be allowed to participate in NYSERDA’s Tier 1 REC procurements noting that solar PV should have access to additional incentives beyond the NY-Sun program and that the certification and procurement processes addressed in the Phase 1 Proposal should not unduly burden DER resources.

The Joint Utilities support the creation of RECs from DER and note that these resources are critical to meeting the Commission’s CES goals. It requests further clarification concerning metering arrangements for DER installations, noting that measurement and verification required for larger-scale installations could be cost prohibitive for many DER projects, which are typically between 4kW and 200kW rooftop solar PV systems.

The Joint Utilities oppose the proposal requiring utilities to report DER registration data and monthly production information to NYSERDA and NYGATS. The Joint Utilities assert that the NYGATS Operating Rules place the responsibility of facility registration and production on the Qualified Independent Provider or allow the information to be self-reported. More importantly, the Joint Utilities note that it does not have gross production data, only net-metered data used for billing, therefore, accuracy is not increased by requiring the utilities to report the information. For small-scale installations, the Joint Utilities recommend that the NYGATS administrator require the resource owner to self-certify the expected monthly output upfront, potentially as part of the NY-Sun incentive application process and that improved estimation and measurement of energy production from DER facilities be developed and standardized. Also, the Joint Utilities request that if the Commission does place any reporting requirements on utilities, that it also require NYSERDA to enter into a data security agreement with each utility; require the utilities to seek customer consent to report the information; and allow the utilities to seek incremental cost recovery associated with gathering and reporting the data.

Discussion

The Phase 1 Proposal and comments correctly note that the eligibility of net-metered DER to participate in NYSERDA's Tier 1 procurements will be impacted by Commission decisions in the VDER proceeding, which will determine new compensation methods for DER value, including their environmental attributes, through new utility tariffs. Once those determinations are made, NYSERDA will be required to revise the implementation plan to align those decisions with the eligibility rules for participation in Tier 1 procurements and other associated requirements for tracking DER in NYGATS.

The Joint Utilities raise important issues with respect to tracking and reporting information on DER in NYGATS. In some instances, NYSERDA does have information associated with their incentive programs, such as NY-Sun, however those programs do not cover the universe of all DER that is installed or will be installed in the future. While self-reporting, as recommended by the Joint Utilities, may be appropriate in some instances, the utilities, by way of their role as gatekeepers for DER grid interconnections, are needed to assist with tracking and reporting DER information that only they retain and that will be necessary to accurately measure progress towards the RES goal. Therefore, the utilities will be required to work with NYSERDA, as administrator of NYGATS, to develop protocols for reporting necessary information on needed DER installations and other load modifiers, as consistent as practicable across all utility service territories, and file such protocols for Staff acceptance within 60 days of the issuance date of this order.

TIER 2 MAINTENANCE RESOURCES

Brookfield believes that the Tier 2 program needs to be expanded to recognize the opportunity cost to the existing baseline resources that help to comprise the 26 percent of the CES goal or, according to Brookfield, it will result in higher costs for New York customers over the long run. Brookfield urges the inclusion of all existing zero-emission resources, regardless of technology or size, in the ZEC program or, alternatively, that a Tier 2 REC program be established for existing renewable resources that is generally competitive with the value ascribed by nearby jurisdictions, i.e., recognition of the opportunity cost of these resources and fundamental value of the environmental attribute.

The Renewable Energy Parties recommend that the Commission revisit eligibility and the compensation approach for Tier 2, or at a minimum, Tier 2 should be broadened to include all technology types eligible for Tier 1. It further requests that consideration should be given to better aligning Tier 2 with the rest of the CES framework. The Environmental Groups recommend that the Phase 1 Proposal be revised to include criteria ensuring that contributions of existing baseline resources are appropriately tracked and counted towards the achievement of the CES and to ensure that RECs are not double counted.

Empire State Forest Products Association and New York Bioenergy Association state that the existing maintenance resource policy has not achieved its primary goal of keeping baseline resources financially viable and operational and requests that the Phase 1 Proposal be revised to include a reasonable rate of return on capital investments in its facility. ReEnergy recommends revising criteria for demonstrating eligibility for Tier 2 by including job creation and retention, regional spending on fuel and other goods and services, fuel diversity, enhanced forest health and other non-economic factors that provide benefits to the overall region. It, too, claims that the Phase 1 Proposal’s focus is solely on cost-of-service and does not appropriately value the existing fleet of baseline resources.

The Renewable Energy Parties, Environmental Groups, SEIA/NYSEIA and Gravity Renewables also request that the eligibility for demonstrating the need for maintaining existing resources be expanded to consider more than just cost-of-service and that alternative contract terms for eligible resources to reflect the costs of obtaining new Tier 1 supply and other market factors be considered.

IPPNY urges the Commission to include Tier 2 eligibility for all resources that came into commercial operation before January 1, 2015 and which qualify as eligible technologies in the CES Order. It also requests additional information in the Phase 1 Implementation Plan on the tracking and monitoring of the sale of RECs from baseline resources both in-state and out-of-state and the prices paid for those RECs. Noble states that the Commission should reserve decisions on Tier 2 until Staff complies with the Commission's December Order, which requires revisiting the maintenance of existing baseline resources.

Discussion

The comments expressed above are nearly identical to points raised in other venues in this proceeding and already considered by the Commission in the CES Rehearing Order, noted above. Staff will be considering these comments and other factors in its report to the Commission within 180 days of the issuance of this order.

NYSERDA PROCUREMENTS

Certification Process

Most commenters support the certification process for verifying Tier 1 resource eligibility, commercial operation, and provisional certification for participation in the Tier 1 REC procurements administered by NYSERDA. DER providers and their advocates commend the Phase 1 Proposal's transparent and streamlined web-based process for verification of Tier 1 eligibility and the ability for developers to provisionally certify non-operating projects on a continuous basis. SRECTrade recommends allowing developers to bid in tranches of RECs from speculative or unidentified DER projects, provided certain milestones are met. It notes that this concept was used in the Illinois Supplemental PV Procurement program and was successful in creating opportunities for developers to secure REC contracts for forecasted projects and those in development, thereby guaranteeing a REC revenue stream for project owners at the time of project contracting. SRECTrade also recommends that the generation start date coincide with the facility's date of interconnection and not the Statement of Qualification (SoQ) date, as proposed in the Phase 1 Proposal, thereby allowing projects to receive RECs retroactively back to the threshold eligibility date of January 1, 2015, even if a generator began operating prior to that date.

Discussion

The criteria for demonstrating and verifying the eligibility of resources for Tier 1 of the RES is a necessary and important component in implementing the program. SRECTrade's recommendation to provisionally certify speculative DER projects cannot be accommodated since it defeats the purpose of ensuring projects are well developed before bidding into Tier 1 procurements. However, provisionally certifying aggregated projects can be accommodated if projects are aggregated by technology and reach commercial operation during the same calendar year. These criteria are in the Phase 1 Proposal.

With respect to SRECTrade's comment regarding backdating eligibility, the date provided on the SoQ will establish the point in time where forthcoming NYGATS certificates will be designated as Tier 1-eligible RECs. However, as the availability of the certification process will occur after the launch of the RES program, NYSERDA will be required to offer a limited opportunity for operating Tier 1-

eligible projects to apply for an SoQ and, if certified as eligible, for the SoQ to be effective as of January 1, 2017. However, this in no way binds NYSERDA to purchase Tier 1 RECs from those facilities.

Step One: Threshold Criteria for Bidding

Many of the comments focus on the various aspects of the proposed threshold criteria that developers of renewable facilities would need to meet in order to participate in NYSERDA's Tier 1 REC procurements. Most DER providers and their advocates recommend more stringent criteria to ensure project development is at sufficient maturity while large-scale renewable developers advocate for more flexibility.

Cypress Creek recommends strengthening requirements for demonstrating site control, interconnection progress and facility permitting. Specifically, it recommends requiring executed contracts for a lease or option on land; a completed NYISO interconnection feasibility study with fees paid and a full "Critical Issues Analysis" of required permits to construct and operate the project. For projects larger than 25 MWs, Cypress Creek, along with SEIA/NYSEIA and Community Energy, recommend submittal of a Public Involvement Plan under the Public Service Law Article 10 regulations for siting generation facilities. It also requests confidential treatment of certain items listed under "Additional Requirements" in the Phase 1 Proposal and opines that some do not appear to be relevant. SEIA/NYSEIA and Community Energy support many of the same recommendations.

SRECTrade states that producing documents that demonstrate eligibility may prove too burdensome for some small DER providers and recommends that the level of demonstration be tailored to the size of the project. It also requests that standards be developed that would apply to all documents and submissions required during the bidding process and through the full term of the REC contract.

The Renewable Energy Parties, on the other hand, request more flexibility regarding site control stating that the requirements are unrealistic for large-scale projects that may occupy many parcels of land. The Renewable Energy Parties recommend 70 percent site control for the major generating equipment only and 100 percent site control 12 months prior to the commercial operation milestone date. Invenergy concurs that it is sufficient to demonstrate site control 12 months prior to the latest commercial operating date requirements and further recommends quarterly updates to keep NYSERDA apprised of progress until all the land is under a successful bidder's control.

Invenergy also seeks clarification on the required documentation for the section on "Additional Requirements", noting that the Phase 1 Proposal requires a signed statement but not necessarily documentation unless requested by NYSERDA. Invenergy states that the distinction is important in guiding developers on how to meet the criteria. For offshore wind projects, the OSW Alliance recommends a single criterion, that a proposed facility demonstrate award of an offshore lease for electricity delivery into NYISO zones J or K.

Discussion

The threshold criteria identified under Step One are intended to provide some confidence that proposed facilities seeking long-term NYSERDA Tier 1 REC contracts under RES procurements have achieved a minimal level of development with the goal of minimizing speculative bidding. These additional requirements are a result of lessons learned through administering the RPS Main Tier procurements. While bid deposits and contract security were required in the RPS program to minimize speculative bids, these requirements were not effective proxies for project viability, resulting in considerable attrition after contracts were signed (often with a loss of deposits and security payments). While the check-list for each criterion is thorough and considers a number of factors, including project size and technology type, it is not exhaustive and NYSERDA will have flexibility to consider other criteria that can demonstrate development progress, as suggested by the comments, as long as NYSERDA is clear and transparent regarding criteria both in the Phase 1 Implementation Plan and in documents developed for each solicitation.

Bid Requirements

IPPNY states that bid deposits should be returned to unsuccessful bidders and to developers that fail to bring their projects to commercial operation. SRECTrade urges the Commission to consider an appropriate bid deposit associated with DER projects to reflect the significant burden that such capital outlay can place on DER project owners. It recommends that NYSERDA provide for two separate bid deposits for DER and non-DER developers. It also urges the Commission to require NYSERDA to return deposits to unsuccessful bidders quickly. The Renewable Energy Parties recommend that the bid deposit be a fixed $/MWh amount and that it be published by NYSERDA in advance for comment prior to bid awards.

Discussion

The Phase 1 Proposal notes that bid deposits will be commensurate with the size of projects bidding into the solicitation and that NYSERDA will benchmark the deposit requirements on other procurements for similar size projects. Because the Phase 1 Proposal proposes significantly more requirements to in order to bid, there may be an ability to reduce bid deposits required relative to past RPS solicitations, depending on compliance with all the criteria. However, in no circumstance will bid deposits be greater than those required in the 2017 RPS solicitation scheduled in April. Also, previous RPS program solicitations clearly specified the criteria for bid refunds and contract security deposits that are well established and reasonable.[9] Therefore, the request of IPPNY to require that all deposits be returned if a project is not brought to successful completion is rejected.

Step Two: Bid Evaluation

Cypress Creek and SEIA/NYSEIA support the categories and weighting proposed in Step Two for evaluating bids but also recommend that the details and scoring methods for each category be transparent, clear and objective. Cypress Creek recommends development of a mathematical approach for each category, such as the California RPS Project Viability Calculator, that could be used for every solicitation to provide consistency.

Cypress Creek and SEIA/NYSEIA oppose the use of a confidential technical evaluation panel (TEP) to evaluate bid proposals, stating that it undermines the process and opens it up to unnecessary criticism. It also states that eliminating the TEP would speed up the award process and decrease administrative costs. Both parties request that bidders have access to details of their score, upon completion of the solicitation, to ensure confidence in the process and to encourage more viable bids in the future. SRECTrade recommends that bids associated with DER projects be evaluated separately from non-DER projects to account for the unique costs and benefits provided by DER.

[9] See https://www.nyserda.ny.gov/Funding-Opportunities/Closed-Funding-Opportunities/RFP-3257-Renewable-Portfolio-Standard-Program-Purchase-of-Renewable-Energy-Attributes.

IPPNY states that price should be the primary focus, since it is the most objective criterion; the economic weighting should not be “de-emphasized” and the evaluation process should not favor some technologies over others. The OSW Alliance recommends decreasing the weight of price to 40 percent and that a new “systems impact” category be included and weighted at 30 percent. The Renewable Energy Parties and the Environmental Groups recommend that project viability (10 percent) and operational flexibility/peak coincidence (10 percent) metrics be further explored through public comment to develop more objective and transparent criteria. SEIA/NYSEIA recommends reducing the weight of price to 60 percent and increasing the weight of operational flexibility/peak coincidence to 15 percent. SEIA/NYSEIA and Community Energy suggest the use of a peak coincidence factor for each technology and suggests defining peak as the top 5 percent of demand hours on an annual basis. Community Energy also recommends that the Commission set an explicit goal for utility-scale solar PV of at least 20 MW for the 2017 procurement. The NYISO commends the Phase 1 Proposal for the required operational flexibility/peak coincidence weighting criterion stating that it will assist in selecting resources that better align with the structure and benefits of the wholesale market.

For the Portfolio Risk Assessment, the Renewable Energy Parties and Invenergy suggests that the diversity of resources metrics be applied on a rolling two year basis of the contract award groups. The Environmental Groups suggest that this criterion be eliminated or modified to apply to the overall portfolio and not any individual award group. The OSW Alliance states that the criterion is problematic and risks exclusion of resources despite having ranked high on all other evaluation criteria. SEIA/NYSEIA question the applicability of the developer experience criterion that allows the TEP to limit contract awards to specific project owners based on a capacity of no more than five times the renewable capacity that the owner has successfully brought to commercial operation.

<u>Discussion</u>

While it is natural for developers and owners of facilities to want better incentives for their technologies by revising various bid scoring categories, the additional criteria or revisions to the weighting are rejected at this time. Price continues to be the most important factor in a competitive solicitation to contain costs of the RES program and a 70 percent weighting will continue to be employed. The other three criteria, all weighted equally, are appropriate and balanced. NYSERDA will be required to clearly describe the criteria in each solicitation and the rationale for their application will be appropriately documented in the contracting record both to ensure objectivity and transparency in the evaluation process. With respect to comments opposing the TEPs to evaluate bids, their use in competitive procurements is commonplace in the industry and their expertise is needed. Also, arguments that claim TEPs slow the review process and are more costly are not persuasive. On the contrary, NYSERDA has already provided a timetable for the 2017 solicitation and award of bids and the use of independent evaluators and the TEP which possesses unique proficiency with the evaluation of energy generation projects will assist in keeping the tight schedule. However, NYSERDA will be required to consider Cypress Creek's recommendation to use best practices in the development of objective criteria for each criteria and consider the appropriate use of the California RPS Project Viability Calculator.

Maximum Acceptable Bid Price

Several commenters oppose the use of a confidential maximum acceptable bid price (MABP). Cypress Creek claims that the lack of transparency will arbitrarily interfere with the market, resulting in distorted bids and more project attrition. It recommends that the MABP be used only when there is no competitive procurement process or functioning market. It recommends a two prong test to gauge competitiveness: i) that the energy production (MWhs) eligible for Tier 1 RECs is at least two times the amount NYSERDA needs to procure for the year; and ii) that there must be at least five unique developers bidding into the solicitation process. SEIA/NYSEI concur with Cypress Creek's recommendations.

The Environmental Groups also suggest the development of a market evaluation tool to determine the level of market competition before triggering the MABP. It further recommends that if the MABP is triggered in the first auction in a given year, then the MABP should be increased for the second auction to ensure that procurement goals are achieved for that year. Finally, the Environmental Groups recommend that if the MABP is used that one be determined for each technology to achieve portfolio diversity. SRECTrade concurs, stating that DER will have difficulty competing against larger-scale projects. The Renewable Energy Parties urge realistic assumptions when setting the price and also consider the level of competition to determine if one is needed. Invenergy also opposes the use of a MABP but stated that if it is deemed necessary, it should be based on forward market projections at the time bids are due.

Discussion

NYSERDA has used a confidential MABP metric for each solicitation since it began administering the RPS program in 2005. The metric served as an effective tool for containing program costs and was employed even when bidding was robust. The price at which the MABP is set is meant to balance the objectives of encouraging investment in new projects and protecting ratepayers from the costs of accepting bids at any price. Therefore, NYSERDA will continue using the MABP for the scheduled 2017 solicitations and work with DPS Staff and consultants in determining the maximum allowable bid, taking into consideration current market conditions and other relevant factors as it has done throughout the course of administering procurements.

In response to comments that request the MABP be transparent, this defeats the purpose of its intended use, which is to prevent bidding behavior that could lead to bid prices at or just below the MABP. Also, comments that requested a unique MABP for each technology is rejected. This recommendation is akin to having separate technology tiers, an issue addressed in the CES Order.

Contracts

The Renewable Energy Parties and Invenergy request that contracts be awarded for 100 percent of a facility's generation output. SEIA/NYSEIA opposes the useful life rule with respect to contract duration, recommending that utility-scale solar be able to obtain a 20-year contract with NYSERDA for Tier 1 RECs, regardless of a facility's age as long as it meets the eligibility requirements. Also, it requests consideration of REC contracts beyond 20 years in future solicitations. Cypress Creek states that it is important to extend the useful life of solar PV beyond 20 years which will be relevant if contracts are extended beyond 20 years or if a DER facility has an option to move between the VDER tariffs proposed in Staff's White Paper in the VDER Proceeding and a REC contract with NYSERDA.

SRECTrade supports streamlining the contract duration criterion by applying the same rule to all facilities, which is to commence the contract on the date of a facility’s first REC delivery and lasting for the lesser of i) 20 years or ii) the facility’s useful life. It also suggests that DER providers be able to use an aggregator contract manager that can facilitate DER REC delivery, invoicing and other services to alleviate the burden for smaller DER providers.

Community Energy requests that if a contract is terminated by NYSERDA, due to lack of sufficient land control, within 120 days of a contract award, per the Phase 1 Proposal, that NYSERDA award a contract to the next eligible bidder. Invenergy requests consideration of requiring bidders to submit an additional bid price that has a fixed price escalator, such as 2.25%, which considers future operations and maintenance (O&M) costs. The Renewable Energy Parties request that the bid deposits and contract security requirements be determined and included in the RFP for the 2017 Procurement.

The OSW Alliance request modifications to the commercial operation date (COD) criteria by setting the initial COD at five years from the signing of the contract with four extensions of six months each. IPPNY recommends that projects awarded contracts in the last RPS solicitation held in 2016, be afforded the same extensions of the COD as proposed in the Phase 1 Proposal.

Brookfield recommends that that the Commission re-establish the contract opt-out clause, available in past RPS solicitations, that allows an owner to suspend its contract if it can show an opportunity to sell its RECs to an in-state buyer.

Discussion

The 20-year contract has been the maximum term in recent RPS procurements and will continue to be used in future solicitations. The criteria for calculating the maximum contract length for facilities currently operating and those proposed are fair and appropriate and SRECTrade’s proposal to further streamline the criteria is acceptable as long as it provides the same result as proposed in the Phase 1 Proposal. The requests of the Renewable Energy Parties and Invenergy to offer 100 percent of its RECs for sale to NYSERDA is also adopted. The contract opt-out request by Brookfield, however, needs further consideration since it could have implications on the final disposition of Tier 1 RECs sold in the voluntary market and LSE compliance obligations. Therefore, the opt-out feature is not adopted for Phase 1 implementation and NYSERDA and Staff will consider this issue and any related parameters in a subsequent implementation plan proposal prior to NYSERDA issuing a 2018 Tier 1 REC solicitation.

Requests to require other procurement parameters or changes, such as multiple bid prices or new criteria for the dates of commercial operation are rejected for the 2017 solicitations but may be considered in future implementation plan proposals.

LOAD SERVING ENTITY COMPLIANCE AND REPORTING

The ESCO Coalition opposes the method for calculating an LSE’s ZEC obligation and recommends that NYSERDA allow for quarterly true-ups to minimize disparity between estimated ZEC obligations and actual obligations based on changes in load. Constellation seeks clarification on the treatment of non-Tier 1 RECs in the NYGATS settlement process.

PSEG-LI states that the Tier 1 REC banking rules should be modified and caps eliminated since it can impede development of renewables, especially LSEs that choose to self-supply. It recommends that if the banking cap is not eliminated then it should be increased to at least 60%, noting that this would allow the banking of Tier 1 RECs that could be used to meet the increasing percentage of future year LSE obligations.

Invenergy recommends that NYSERDA add a page to its website that provides a transparent representation of the percent of renewables procured and each LSE's compliance. Constellation seeks further clarification on the scheduling requirements of energy from outside of New York.

Discussion

The issues raised by the ESCO Coalition are currently before the Commission in a petition filed by Liberty Power Holdings, LLC.[10] These issues will be determined in a timely manner but will not alter the requirements for the 2017 compliance period that have been established in previous Commission orders in this proceeding. With respect to Constellation's comment, all renewable generation technologies eligible for the RES will be tracked in NYGATS, or accounted for in other ways, regardless of their Tier 1 eligibility. This is to ensure that all renewable generation consumed in the State is tracked and reported so that double counting of RECs is avoided. NYSERDA will clarify its rules on the tracking and reporting of DER facilities as discussed above.

Regarding banking of Tier 1 RECs, PSEG-LI raises a valid point for the near term due to the relatively small compliance obligation imposed on the LSEs. Therefore, the request to raise the limit of banked Tier 1 RECs that can be

[10] See Liberty Power Holdings LLC Petition filed on December 19, 2016 and clarifying letter of January 6, 2017.

used for a subsequent compliance period is increased from 30 to 60 percent. All other banking criteria in the Phase 1 Proposal are adopted. NYSERDA and Staff shall revisit the issue in a subsequent implementation plan, prior to any 2018 solicitations.

NYSERDA will also be required to provide overall CES compliance information on their CES website that includes the status towards the annual CES procurement goals and the compliance targets in a clear and transparent manner.

ADDITIONAL ISSUES

Several parties raised issues outside of the scope of the Phase 1 Proposal. The Renewable Energy Parties, the Environmental Groups and IPPNY state that the Plan lacks the necessary LSE compliance targets post-2017 and details on how they will be determined. IPPNY further states that more clarity is needed on the role of large scale renewables and DER in those targets. EMA also recommends visibility in the long-term LSE compliance targets for market stability and requests that the environmental attributes (non-Tier 1 RECS) from the State’s baseline of renewable resources be accurately tracked so that there is no-double counting. The EMA also recommends that the ACP levels be set at a forward-looking price and that terms and conditions be consistent with adjacent regions. The Environmental Groups and IPPNY state that the Commission should provide clarity on the disposition of the ACP funds that may be collected from LSEs.

The OSW Alliance recommends that the State implement the Empire Offshore Accelerator program which is a short term stimulus for the offshore wind industry. The City of New York concurs with this recommendation.

The Joint Utilities recommend that the Commission establish a permanent, independent market monitor similar to the market monitor oversight of the NYISO that will ensure the market for procuring RECs is robust and that no party can exercise market power.

Discussion

Issues raised outside the scope of the Plan are either being considered or will be included in subsequent implementation plans. The request for consideration of a market monitor will be considered if it is determined that one is needed as the program advances.

Criteria to further incent offshore wind is an effort being led by NYSERDA in its development of an offshore wind master plan. NYSERDA will be conducting analyses and reaching out to stakeholders, efforts identified in its offshore wind blueprint issued in 2016.[11] NYSERDA will be required to consider the comments of the OSW Alliance and the City of New York as it continues to work with stakeholders in its planning and analyses for the master plan.

Staff and NYSERDA will also be required to provide guidance and proposals on the post-2017 LSE targets; ACP levels and the disposition of any ACP collected funds in a Phase 2 Implementation Plan which shall be filed for notice and comment within 60 days of the issuance of this order.

The Commission orders:

1. The Clean Energy Standard Phase 1 Implementation Plan Proposal submitted by the New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service (Staff) is approved in accordance with the discussion described in the body of this Order.

[11] See https://www.nyserda.ny.gov/All-Programs/Programs/Offshore-Wind

2. NYSERDA and Staff shall file a Final Phase I Implementation Plan no later than 30 days of the issuance of this Order, making the necessary revisions described in the body of this Order.

3. Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, d/b/a National Grid, Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation and Rochester Gas & Electric Corporation are directed to work with NYSERDA, as administrator of the New York Generation Attribute Tracking System (NYGATS), to develop protocols for reporting necessary information on distributed energy resources (DER) installations and other load modifiers, as consistent as practicable across all utility service territories, and file the plan for Staff acceptance within 60 days of the issuance date of this Order.

4. Staff shall file a report regarding eligibility for repowered facilities and the potential for expanding Tier 2 eligibility within 180 days of the issuance of this Order.

5. NYSERDA and Staff shall consider parameters for contract opt-out provisions in a subsequent implementation plan that will be required before NYSERDA issues a solicitation for Tier 1 RECs in 2018. NYSERDA and Staff shall revisit the issue of banking RECs in a subsequent implementation plan and prior to solicitations occurring in 2018.

6. Staff and NYSERDA are directed to provide guidance and proposals on the post-2017 LSE targets; alternative compliance payment (ACP) levels and the disposition of any ACP collected funds in a proposed Phase 2 Implementation Plan filed for notice and comment within 60 days of the issuance of this Order.

7. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an

extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

8. This proceeding is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary