

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 20, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
Diane X. Burman, dissenting  
James S. Alesi  
Tracey A. Edwards  
John B. Howard, dissenting  
David J. Valesky  
John B. Maggiore

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

CASE 15-E-0751 - In the Matter of the Value of Distributed Energy  
Resources.

ORDER MODIFYING CLEAN ENERGY STANDARD TIER 1 OBLIGATIONS

(Issued and Effective April 20, 2023)

BY THE COMMISSION:

INTRODUCTION

On November 9, 2022, the New York State Energy Research and Development Authority (NYSERDA) filed a petition proposing to transition the Clean Energy Standard (CES) Tier 1 Renewable Energy Standard (RES) compliance obligation for Load Serving Entities (LSEs) away from the current predetermined percentage-based approach toward a load share approach similar to other existing LSE obligations under the CES (the Petition). The Petition seeks to position the administration and reconciliation of the Tier 1 program on par with the other CES Tiers, including Tier 2 (competitive program for baseline resources), Tier 3 (the Zero Emission Credit (ZEC) program),

Tier 4 (program for delivery of renewables into New York City), and the Offshore Wind Standard, while discontinuing the purchase of Alternative Compliance Payments (ACPs) by LSEs, which do not add to the State's renewable energy acquisitions. In this Order, the Commission adopts, with modifications, the proposals to implement a load share obligation related to Tier 1 of the CES and to conduct voluntary sales of Renewable Energy Certificates (RECs).

#### BACKGROUND

In the CES Framework Order, the Public Service Commission (Commission) established the CES to increase the State's renewable energy supply and preserve New York's existing zero-emissions generation.<sup>1</sup> The Commission divided the CES into a RES and ZEC requirement. The RES includes a Tier 1 component designed to foster development of new renewable energy resources that obligates each LSE to serve its retail customers with new renewable resources, evidenced by the purchase of qualifying Tier 1 RECs from NYSERDA or other sources, or by making ACPs. Under the ZEC program, each LSE that serves end-use customers in New York must purchase ZECs from NYSERDA in proportion to the load they serve relative to the total statewide load.

Per the CES Framework Order, NYSERDA was tasked with the role of procuring RECs from Tier 1 RES-eligible resources under long-term contracts as a central procurement agent, and reselling Tier 1 RECs procured through Renewable Portfolio Standard Main Tier central procurements (pre-2017) and Tier 1 RES procurements (2017 and thereafter) for ultimate use by RES-obligated LSEs. For the 2017 compliance period, NYSERDA

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<sup>1</sup> Case 15-E-0302, Order Adopting A Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

prospectively published on its website a price and the estimated quantity of the Tier 1 RECs that NYSERDA would offer for sale. LSEs were offered a limited period of time during which they could elect to purchase their pro-rata share of Tier 1 RECs from NYSERDA for the compliance year.

Through a series of subsequent implementation plans, the Commission approved additional measures and processes for the sale and disposition of RECs to LSEs to meet their compliance obligation. Specifically, the Phase 2 Implementation Plan Order introduced, for the 2018 compliance period, four quarterly Tier 1 REC sales events during which NYSERDA offered the actual number of Tier 1 RECs in NYSERDA's New York Generating Attributes Tracking System (NYGATS) account at the time of the sale.<sup>2</sup> Additionally, the Phase 2 Implementation Plan Order set forth the methodology to calculate the ACP for 2018 and beyond. The Phase 3 Implementation Plan Order continued the four quarterly Tier 1 RECs sales for 2019 and beyond.<sup>3</sup> The intention of the four quarterly Tier 1 REC sale process was to benefit LSEs by no longer holding them to their potentially outdated historic load share ratio, while removing a range of estimation risks and capital commitments, and by better aligning the timing of purchases with knowledge of their obligations.

The 2021 CES Divergence Test noted that LSEs may currently fulfill their CES obligation using three different methods: (1) purchasing RECs from NYSERDA; (2) self-suppling RECs by purchasing qualified RECs from other sources; or (3)

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<sup>2</sup> Case 15-E-0302, Order Approving Phase 2 Implementation Plan (issued November 17, 2017) (Phase 2 Implementation Plan Order).

<sup>3</sup> Case 15-E-0302, Order Approving Phase 3 Implementation Plan (issued December 14, 2018) (Phase 3 Implementation Plan Order).

making ACPs to NYSERDA.<sup>4</sup> The 2021 Divergence Test further indicated that ongoing construction delays of Tier 1 projects has lowered REC quantities available under option (1) and that the self-supply option is either limited or unavailable to the majority of LSEs, leading to a high rate of ACP purchases to meet LSE obligations that is placing an additional burden on ratepayers.<sup>5</sup> The Commission accordingly modified LSEs' obligations and supported NYSERDA and Department of Public Service Staff (Staff) exploring a different approach to the Tier 1 method of allocating program costs to the LSEs.<sup>6</sup>

#### THE PETITION

The Petition proposes a new approach that would require LSEs to purchase from NYSERDA their load share of the Tier 1 RECs purchased by NYSERDA annually. This approach is already used in the CES Competitive Tier 2, Tier 4, Offshore Wind Standard, and the ZEC programs. The Petition proposes that this new process would be based upon the "pay-as-you-go" model implemented by NYSERDA, as approved in the ZEC Implementation Plan Order.<sup>7</sup> The Petition explains that the pay-as-you-go model applies a uniform wholesale per MWh charge to each LSE's actual wholesale load to calculate its monthly Tier 1 REC obligation payments.

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<sup>4</sup> Case 15-E-0302, Clean Energy Standard 2021 Divergence Test and Target Setting Filing (filed November 29, 2021) (2021 Divergence Test); see also, CES Framework Order, p. 16.

<sup>5</sup> 2021 Divergence Test, pp. 4-5.

<sup>6</sup> Case 15-E-0302, Order Modifying Clean Energy Standard Load Serving Entity Obligations and Establishing the 2024 Obligation (issued March 16, 2022), pp. 11-12.

<sup>7</sup> Case 15-E-0302, Order Approving Zero-Emissions Credit Implementation Plan With Modifications (issued September 20, 2019) (ZEC Implementation Plan Order).

One of the key benefits of transitioning to a load share model, according to NYSERDA, would be the ability to hold voluntary Tier 1 REC sales that could transition certain costs of the Tier 1 component of the CES from obligated ratepayers to the voluntary market. As discussed further below, any RECs purchased through these voluntary sales would reduce the total volume of RECs held by NYSERDA that make up the Tier 1 LSE obligation, ultimately reducing the obligation that gets attributed to LSEs. Further, the Petition highlights that the proposed approach would eliminate the need for ACPs. NYSERDA would only collect enough funds to meet its contractual requirements for a compliance year plus any Commission-approved administrative adder.

#### Implementation of Proposed Load Share Obligation

##### A. Treatment of VDER RECs

The Petition explains that the investor-owned utilities (IOUs) currently use their Value of Distributed Energy Resource (VDER) Tier 1 RECs to help offset their Tier 1 obligations under the CES. NYSERDA proposes to now purchase all the VDER Tier 1 RECs from each IOU and add these VDER Tier 1 RECs to the Tier 1 RECs estimated to be purchased by NYSERDA, which would determine the total Tier 1 LSE obligation. NYSERDA would then sum the VDER Tier 1 RECs originally procured by each IOU with the NYSERDA-procured Tier 1 RECs when performing an annual reconciliation process. This proposed process would allow the IOUs to receive credit for their required purchases of VDER Tier 1 RECs, with the cost of VDER Tier 1 RECs shared amongst all jurisdictional ratepayers as the environmental attributes of these RECs represent a societal benefit. NYSERDA also proposes to update the processes in NYGATS to allow VDER Tier 1 RECs minted in NYGATS to be transferrable to NYSERDA and that NYSERDA be able to transfer VDER Tier RECs as necessary.

The Petition proposes that each IOU would report to NYSERDA and Staff, by June 15 of each year, their forecast of the number of VDER Tier 1 RECs for the upcoming compliance year and the weighted-average Environmental Value component of the Value Stack (also referred to as the E-Value or Value of E price) that each IOU would pay to purchase the VDER Tier 1 RECs.<sup>8</sup> The first compliance year would be 2025. NYSERDA proposes that by March 15 of each compliance year, each IOU would report to NYSERDA and Staff the actual number of VDER Tier 1 RECs procured by each IOU for the previous year and the weighted-average Value of E price paid. NYSERDA would use this information to determine the Final Tier 1 Rate. NYSERDA proposes that each IOU would receive credit for the VDER Tier 1 RECs transferred to NYSERDA, at the cost reported in the March 15 filing, during the annual reconciliation process. Under this approach, the IOUs would not be made whole by NYSERDA until the Tier 1 reconciliation process is complete. NYSERDA proposes that if the Long Island Power Authority (LIPA) should elect to participate in the new Tier 1 REC compliance framework, NYSERDA would treat LIPA in the same manner as the IOUs. NYSERDA also

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<sup>8</sup> The VDER Phase One Order directed that the Environmental Value of the Value Stack be fixed for the life of the project, and set at the higher of either: (1) the Clean Energy Standard Tier 1 REC price, based on the latest Tier 1 procurement price published by NYSERDA; or (2) the Social Cost of Carbon (SCC), net of the expected Regional Greenhouse Gas Initiative allowance values, as calculated by Staff. The Commission subsequently established that the Environmental Value should be fixed for the life of a project at the time a project pays 25% of its interconnection costs, or at the time of the execution of an interconnection agreement if no such payment is required. The current E-Value is \$0.03103 per kilowatt hour. Case 15-E-0751, et al., Value of Distributed Energy Resources, Order on Phase One Value of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters (issued September 14, 2017) (VDER Phase One Order), p. 42.

proposes to purchase any VDER Tier 1 RECs from other municipal utilities at no more than the cost of the Value of E.

The Petition proposes the transition, from the LSE obligation percentage to a method using an LSE's load share, to determine each LSE's obligation, commencing with year 2025. The first voluntary Tier 1 REC sale would commence in 2024 for delivery in the 2025 compliance year.

B. Voluntary REC sales

The Petition explains that there is growing interest in voluntary REC purchasing and to minimize costs for ratepayers, NYSERDA is proposing the inclusion of voluntary REC sales in the transition to a load share framework. As proposed, NYSERDA would conduct both a presale and post-sale process prior to and subsequent to, respectively, the purchase and sale of Tier 1 obligated RECs under the main operation of the program. NYSERDA proposes to sell Tier 1 RECs to voluntary purchasers and to enter into contractual arrangements with more than one entity. NYSERDA would offer Tier 1 RECs for sale to the voluntary market which would help to defray the cost of the Tier 1 program. The voluntary Tier 1 RECs would be offered at NYSERDA's own net-levelized cost (including an administrative adder). NYSERDA proposes a hybrid approach for the voluntary REC sales, including (1) a long-term contracting option, (2) an annual REC presale, and (3) an annual REC resale. Regarding the long-term contracting option, NYSERDA proposes to enter into long-term contracts with creditworthy entities for the sale of Tier 1 RECs similar to the approach approved by the Commission for Tier 4.

1. Annual Tier 1 REC Presale

NYSERDA proposes to offer an annual Tier 1 REC presale covering a one-year period with a NYSERDA-projected REC price. NYSERDA would offer a percentage of net expected Tier 1 REC

inventory for the following compliance year. The first Tier 1 presale would occur in August 2024 based on a projection of VDER and NYSERDA Tier 1 RECs. The length of the sale would be 14 days. NYSERDA would announce the quantity of Tier 1 RECs available for sale, the presale price, and presale process no later than July 15 of each year through the end of the Tier 1 program. The Petition states that commercial businesses, as well as LSEs and Community Choice Aggregators (CCAs), would be eligible to participate in the Tier 1 presales.

The Tier 1 presale inventory for the annual presale would be the total expected Tier 1 REC supply including NYSERDA and utility purchased VDER RECs, minus the long-term contract commitments, multiplied by a percentage (less than 100%) to help ensure that NYSERDA has sufficient Tier 1 RECs to fulfill Tier 1 REC presale orders. NYSERDA anticipates that the Tier 1 REC presale price would be based on the projected net-weighted average cost of Tier 1 RECs after subtracting the voluntary long term contract commitments, plus any Commission-approved administrative adder. In determining the Tier 1 REC presale price, NYSERDA would sum the projected procurement costs and annual MWhs of generation from resources that have existing Tier 1 REC agreements with NYSERDA, both fixed and index priced contracts, and the projected VDER Tier 1 REC costs, to calculate the projected weighted average cost.

NYSERDA also proposes to have the ability to pursue an auction mechanism that would include variable pricing to meet the needs of the market. NYSERDA requests the ability to implement the presale auction structure, starting for the 2025 compliance year, that would sell at or above NYSERDA's forecasted net-weighted average cost to procure RECs for the upcoming compliance year. The forecasted REC price would serve

as an auction reserve price for blocks of RECs that voluntary purchasers could bid on for a designated period of time.

NYSERDA proposes not to limit or guarantee a minimum number of Tier 1 RECs to purchasers participating in the Tier 1 annual presale process. According to the Petition, NYSERDA would allocate the RECs based on the following principles: (1) if the Tier 1 REC demand is below the expected Tier 1 presale inventory, each organization would be allocated a quantity of RECs equal to their order quantity; or (2) if the total Tier 1 REC demand is above the expected Tier 1 REC inventory, each organization would receive a pro-rata share of Tier 1 RECs based upon their total order quantity. NYSERDA acknowledges the need for the development of an automated process for the Tier 1 REC presale process and would request appropriate funding in its annual CES administrative funding request.

## 2. Annual Tier 1 REC Resale

NYSERDA requests the ability to hold a Tier 1 REC resale at the end of the compliance year if there is a sufficient demand for such RECs. NYSERDA explains that there may be additional sufficient demand for Tier 1 RECs from voluntary purchasers after the end of the calendar year. This process would occur in NYGATS, which allows purchases of RECs up until May 31 of the following compliance year. The Tier 1 REC voluntary resale would begin no sooner than the 2025 compliance year. These Tier 1 RECs would be priced at the actual weighted average price, plus any applicable administrative adder. NYSERDA requests the ability to design an auction process that would sell at or above NYSERDA's actual (rather than forecasted) net-weighted average cost to procure RECs for the compliance year. NYSERDA states that this auction mechanism would help minimize ratepayer impacts from the program by maximizing the potential

purchase volume and price for Tier 1 RECs for sale to the voluntary market.

C. REC Transfers

The Petition states that the Tier 1 REC transfers via NYGATS from NYSERDA to a voluntary purchaser's NYGATS account would occur after the Tier 1 compliance year is complete. This process would include Tier 1 RECs under long-term contracts, annual presale contracts, and annual resale contracts.

Should the Petition be approved, NYSERDA has identified initial necessary updates to NYGATS related to restrictions related to transferability. NYSERDA proposes to remove the banking restrictions from non-VDER Tier 1 RECs and further proposes that NYGATS account holders would not be allowed to transfer Tier 1 RECs purchased from NYSERDA. For VDER Tier 1 RECs, NYSERDA proposes to allow VDER Tier 1 RECs to be transferred to NYSERDA's NYGATS account via a standardized agreement. Also, NYSERDA proposes to allow VDER Tier 1 RECs acquired by NYSERDA to be resold by NYSERDA to NYGATS account holders and that NYGATS account holders would not be allowed to transfer VDER Tier 1 RECs purchased from NYSERDA.

LSE CES-Obligation Reconciliation

A. LSE Tier 1 REC Rate

Under the proposed approach, the Petition states that a uniform wholesale dollar per megawatt hour (MWh) charge would be applied to each LSE's actual wholesale load to calculate their monthly Tier 1 REC obligation payments. NYSERDA proposes that beginning on January 1, 2025, and reoccurring each year thereafter, NYSERDA would determine, in collaboration with Staff, the dollar per MWh charge (LSE Tier 1 REC Rate) owed by each LSE for the next compliance year of the Tier 1 program. The LSE Tier 1 REC Rate would be used by all LSEs and NYSERDA to determine the monthly payment an LSE would be responsible for

making to NYSERDA. The Petition explains that the cost component of the LSE Tier 1 REC Rate would be based on total forecasted cost for NYSERDA to purchase Tier 1 RECs and the load component would be based on statewide forecasted load. NYSERDA would utilize Version 1 of the total LSE load data, as settled by the New York Independent System Operator, Inc. (NYISO) each month, as the basis for each LSE's monthly payment to NYSERDA.<sup>9</sup> The final reconciliation would occur in June after the close of each year.

NYSERDA states that the cost component of the LSE Tier 1 REC Rate would be the cost for NYSERDA to procure Tier 1 RECs from the Large-Scale Renewable REC purchase agreements, plus the cost of VDER Tier 1 RECs, plus any Commission-approved administrative adder, and less any sales made through the voluntary sale process. There may be a variation between the forecasted Tier 1 price and the actual price NYSERDA pays for the Tier 1 RECs. NYSERDA plans to review the Tier 1 cost estimate forecast with Staff to ensure concurrence in an effort to minimize the variation between the estimated and the actual cost that would be used in the annual Tier 1 REC reconciliation. Further, NYSERDA proposes to apply an annual load modifier rate, based on load modifier generation data from the previous year. NYSERDA will notify each LSE of the LSE Tier 1 REC Rate for the upcoming year and will publish the rate on the NYSERDA website. Notification of the LSE Tier 1 REC Rate would occur after Commission approval of any NYSERDA administrative adder for the compliance year, but at least two months before commencement of a compliance year.

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<sup>9</sup> The NYISO Version 1 load data is part of the annual settlement process. This is the initial monthly billing period data from the NYISO.

CES-Obligated LSE Reconciliation

NYSERDA states that the reconciliation process would occur each year after the Tier 1 compliance year ends on December 31. Additionally, NYSERDA would reconcile financial obligations to Tier 1 contracted generators and the IOUs would submit their final VDER quantity to Staff and NYSERDA. NYSERDA proposes to offset the total financial obligation to Tier 1 contracted generators and the purchase of VDER Tier 1 RECs with any Tier 1 long-term contract revenue, as well as any Tier 1 annual presale or resale revenue, to determine the net LSE financial obligation. Then, NYSERDA would reconcile the funds collected from each LSE to the net LSE financial obligation necessary to meet their requirement based on the Version 2 load data that is provided from the NYISO and recorded in NYGATS and adjusted for load modifiers.<sup>10</sup> NYSERDA would establish new agreements with LSEs to reflect the terms of any Commission order stemming from the Petition.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) was published in the State Register on December 7, 2022 [SAPA No. 15-E-0302SP56]. The time for submission of comments pursuant to the Notice expired on February 6, 2023. Comments were received by AES Clean Energy Development, Alliance for Clean Energy of NY (ACENY) and Advanced Energy United (AEU), Azure Mountain, Brookfield Renewable, City of New York (NYC), Community Choice

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<sup>10</sup> The NYISO Version 2 data is load or generation data that has had an additional level of QA/QC process applied to it and is therefore more reliable than Version 1 Data. Regarding calendar year end data, Version 2 data is provided by the NYISO through NYGATS by approximately May 15 for the previous calendar year.

Aggregation Administrators of NY (CCAANY), Cornell University, Family Energy, Joint Utilities (JU),<sup>11</sup> Multiple Intervenors (MI), and Vistra Corp. The Comments received are discussed below and summarized in the Appendix.

LEGAL AUTHORITY

The Commission's authority derives from the New York State Public Service Law (PSL), through which numerous legislative powers are delegated to the Commission. Pursuant to PSL §5(1), the "jurisdiction, supervision, powers and duties" of the Commission extend to the "manufacture, conveying, transportation, sale or distribution of ... electricity." PSL §5(2) requires the Commission to "encourage all persons and corporations subject to its jurisdiction to formulate and carryout long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources." PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying ... electricity ... and have power to order such reasonable improvements as well as promote the public interest, preserve the public health and protect those using such gas or electricity ... ."

PSL §4(1) also expressly provides the Commission with "all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]" including, without

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<sup>11</sup> The Joint Utilities include 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 and Electric Corporation.

limitation, a guarantee to the public of safe and adequate service at just and reasonable rates,<sup>12</sup> environmental stewardship, and the conservation of resources.<sup>13</sup> Further, PSL §65 provides the Commission with authority to ensure that "every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." The Commission also has authority to prescribe the "safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public" whenever the Commission determines that the utility's existing equipment is "unsafe, inefficient or inadequate."<sup>14</sup> In addition to the PSL, the New York State Energy Law §6-104(5)(b) requires that "[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update."

#### DISCUSSION

Transforming the Tier 1 program from a percentage obligation approach to a load share obligation method based on the actual Tier 1 RECs available from both NYSERDA's centrally

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<sup>12</sup> See, International R. Co. v Public Service Com., 264 AD 506, 510 (1942).

<sup>13</sup> PSL §5(2); see also, Consolidated Edison Co. v Public Service Commission, 47 N.Y.2d 94 (1979) (overturned on other grounds) (describing the broad delegation of authority to the Commission and the Legislature's unqualified recognition of the importance of environmental stewardship and resource conservation in amending the PSL to include §5).

<sup>14</sup> PSL §66(5).

purchased RECs and the utility VDER RECs is a more efficient process as the State strives to achieve the 70% renewables by 2030 goal established in the Climate Leadership and Community Protection Act (CLCPA).<sup>15</sup> Through this modification to the Tier 1 program, NYSERDA will experience efficiency benefits, including discontinuation of the ACP process which entails calculating the ACP price, billing LSEs when there are inadequate Tier 1 RECs available, and processing ACP payments. Moreover, as noted above, ACPs provide no incremental increases in renewable energy purchases for the State and their elimination will provide administrative relief for both NYSERDA and LSEs. In place of administering ACPs, NYSERDA can focus on refining projections of Tier 1 project generation and work cooperatively with the utilities to administer and track their VDER RECs for eventual transfer to NYSERDA, as explained above. This should result in more accurate projections of Tier 1 resources.

Another benefit relates to the presale and post-sale features of NYSERDA's proposal in which Tier 1 RECs could be purchased by participants in the voluntary market including CCA Administrators, Energy Service Companies (ESCOs), and other market participants. NYSERDA would enter into long term or shorter term one-year contracts with purchasers, depending on purchaser desired terms, and the resulting revenue would be used to offset the eventual cost of Tier 1 RECs charged by NYSERDA to LSEs, thereby resulting in a reduction of overall ratepayer costs. The other notable benefit of the Tier 1 modification would be the consistent administrative processing that Tier 1 would deploy along with the other Tiers, including the

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<sup>15</sup> See Chapter 106 of the Laws of 2019 (codified, in part, in Public Service Law (PSL) §66-p). The CLCPA became effective on January 1, 2020.

competitive Tier 2, ZECs, Tier 4, and Offshore Wind. This should result in reduced administrative effort and cost savings.

Regarding potential market and liquidity conditions resulting from this transformation, ACENY/AEU point out that requiring LSEs to purchase all Tier 1 RECs from NYSERDA would reduce their inclination to purchase Tier 1 RECs outside of NYSERDA, such as through bilateral contracts with generators. As pointed out in the Petition and acknowledged by ACENY/AEU, there are currently very few purchases of such RECs by LSEs and any shortage of RECs that LSEs encounter have been made up from ACPs. The Commission does not see this potential market issue as critical in the overall design of the program because LSEs typically do not have the resources to pursue Power Purchase Agreements or other devices to purchase Tier 1 RECs in the first place. However, if after implementation of this modification there is some evidence of LSE harm by not having the opportunity to purchase Tier 1 RECs other than from NYSERDA, that particular aspect of the program can be reviewed during 2026, which is the next scheduled CES program review after the 2025 implementation of this revised Tier 1 program.

ACENY/AEU also expressed concern that elimination of the ACP removes the economic signal tied to the attainment of the CLCPA goal that 70% of electricity consumed in the State be supplied by renewables by 2030. However, monitoring of the State's renewable energy achievements will continue even as the ACPs are eliminated and LSEs are transitioned from percentage obligations to load share obligations. The CLCPA mandates biannual CES program reviews in which progress toward the 70% goal will be measured and analyzed. The first review subsequent to the 2025 program implementation will occur in 2026 and parties will have the opportunity to view results and comment accordingly.

Next, Azure Mountain expresses concern that the Petition does not detail what will happen with Tier 1 RECs that are not purchased by NYSERDA due to a volume of Tier 1 RECs in excess of contracted volumes. The Commission does not view this as a likely occurrence due to NYSERDA's current practice of contracting for 95% of the anticipated generation output and accordingly, does not expect significant volumes of non-contracted Tier 1 RECs to accrue. Moreover, such RECs would remain available to support voluntary REC products. Additionally, Azure Mountain states that LSEs that are unable to predict future compliance costs will need to build in uncertainty into forward prices, potentially increasing the cost borne by ratepayers. While predicting future REC prices can be challenging, the proposed modification, including the purchase of VDER RECs, reduces some of this inherent unpredictability. With a significant portion of the total number of Tier 1 RECs that would make up the LSE obligation being VDER RECs whose E-value is known, some of this unpredictability is mitigated.

That said, it is understood that some entities may include a risk premium in the products they offer, like is currently done today, to account for any lack of certainty regarding LSE obligations under Tier 1. Under the proposed process, because LSEs will not know their Tier 1 obligation years in advance like they do now, there is inherent uncertainty associated with this obligation. However, the Commission finds that the efficiencies gained in administration of the Tier 1 program, as well as the potential reductions to ratepayer costs through voluntary sales, should outweigh potential risk premiums associated with this uncertainty.

The City of New York points out that some entities may end up purchasing more RECs than needed and under the proposed program, would not be able to sell the excess RECs. LSEs

purchasing more RECs than needed for a green offering has not been a common occurrence, in large part because projections of load can be undertaken at any point prior to, or during, the calendar year and REC purchasing adjustments can be made accordingly. LSEs have the option to purchase less RECs than anticipated at year end, and then use the time between January 1 and May 31 (i.e., the deadline for purchases of RECs in NYGATS) of the following year to purchase any necessary RECs to meet green offering requirements. With that said, several commenters suggested that LSEs be permitted to transfer/sell RECs purchased from NYSERDA to other entities in NYGATS. We agree that parties that purchase Tier 1 RECs during the presale or resale events should have the capacity to sell those RECs to other parties for various voluntary purposes including to CCA programs, ESCOs, and other market participants. Providing this option should assist these programs in procuring the necessary RECs to satisfy their green offerings, especially in light of the shortage of voluntary RECS that has been brought to Staff's attention during the last two years. Therefore, parties that purchase Tier 1 RECs during the presale or resale events are permitted to transfer or resell RECs purchased from NYSERDA to other entities in NYGATS.

Multiple Intervenors (MI) agrees with NYSERDA that the transition to a load share obligation should act to reduce CES compliance costs for ratepayers because of the elimination of the ACP which included a 10% administrative adder over the published Tier 1 price. MI asserts that LSEs were previously forced to purchase ACPs when the supply of Tier 1 RECs was not adequate to meet the LSE percentage obligation. MI also requests more transparency regarding how the voluntary presale and resale processes will be conducted, including how the sale prices will be established. While the auction mechanism for the

Tier 1 sales described by NYSERDA provides some guidance, the implementation plan discussed below will provide details on the sales price and other processes requested by MI.

Brookfield Renewable proposes, similar to the way NYSERDA intends to purchase all VDER RECs from the IOUs, that NYSERDA be required to purchase all RECs from baseline generators that entered commercial operation prior to January 1, 2015. However, Brookfield Renewable misinterprets the reason behind NYSERDA's proposal. If NYSERDA did not purchase the IOUs' VDER RECs, then those RECs would not be included in the statewide LSE obligation and IOUs would not be able to count those RECs as satisfying part of their obligation under the new process. The same is not true of baseline generators, whose output is not able to satisfy an LSE's Tier 1 obligation. Requiring NYSERDA to purchase all RECs from baseline generators would create a new obligation on LSEs and thus the proposal is rejected. Tier 1 is designed to promote the development of new renewable resources and increasing the Tier 1 obligation to support existing baseline renewables is contrary to that purpose and outside the scope of the Petition.

Brookfield Renewable further asserts that the proposed process will result in increases to the prices ESCOs charge for fixed-rate products because they will need to factor in additional risk premiums. However, this concern is mitigated by the cap placed on ESCO fixed rate products. ESCO fixed rate products offered to mass market customers are capped at no more than five percent above the 12-month trailing average utility supply rate.<sup>16</sup> Azure Mountain also comments on the impact this proposal will have on the retail access market, asserting that

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<sup>16</sup> Case 15-M-0127, et al., ESCO Eligibility, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019).

predatory ESCO pricing practices are still occurring, particularly with ESCO renewable products. While currently, no pricing restrictions are placed on ESCO renewable products, further consideration of that issue shall be taken up in the generic retail access proceedings to ensure that ESCO products are provided at just and reasonable rates. The recommendation by Vistra Corp. to remove ESCOs from the Statewide LSE obligation and only have the IOUs collecting Tier 1 costs from ratepayers via delivery rates is rejected. All the State's jurisdictional LSEs will continue to have a Tier 1 obligation following the implementation of the proposed process.

Regarding those comments asserting that NYSERDA purchasing RECs does not create any additionality, the Commission finds these comments misplaced. Under the proposed process, NYSERDA would be purchasing the RECs that LSEs would otherwise purchase themselves or, in the case of VDER RECs, use for their own compliance. The fact that NYSERDA is first purchasing and aggregating those Tier 1 RECs prior to LSEs purchasing them does not negate their additionality and the State's progress toward its renewable energy goals.

The Joint Utilities provide several recommended changes to NYSERDA's proposed program. First, the Joint Utilities presented a calculation which would result in partial relief from the dual payments they must make. As proposed by NYSERDA, the Joint Utilities would make payments to NYSERDA for their Tier 1 obligation, which includes VDER Tier 1 RECs and the centrally procured Tier 1 RECs estimated to be purchased by NYSERDA, and would also continue to satisfy their monthly obligations to purchase VDER RECs from generation assets approved and situated within their service territories. As an alternative, the Joint Utilities proposed reducing NYSERDA's monthly invoice amount by applying the VDER Compensation Factor

to account for the VDER REC purchases. The VDER Compensation Factor utilizes a ratio of individual Utility VDER Forecasted RECs to the NYS Total Tier 1 Forecasted RECs to adjust the monthly payment obligation to NYSERDA. For some of the Joint Utilities, application of the VDER Compensation Factor would result in a negative value in which NYSERDA would be required to make payment to the utilities. The Commission approves use of the VDER Compensation Factor to reduce monthly utility payments to NYSERDA, finding that the VDER Compensation Factor is a reasonable calculation to reduce utility payments to NYSERDA in recognition of the time period the Joint Utilities must wait to be made whole for the VDER RECs it transfers/sells to NYSERDA. However, application of the VDER Compensation Factor should not result in an administrative burden to NYSERDA and thus NYSERDA will not be required to make payments to the utility on any given months where application of the VDER Compensation Factor would call for such a payment. Instead, no payment to NYSERDA would be required by the utility that month.

The Petition requests that the Joint Utilities provide an estimate of the anticipated VDER RECs for the upcoming year by June 15 which would permit NYSERDA to conduct its presale operation by the NYSERDA-prescribed August timeframe. However, the Joint Utilities request that more current VDER REC estimations be provided by November 15 to use when calculating the Tier 1 price for the upcoming year. We concur with the suggested use of this subsequent date for the reasons stated in the Joint Utility comments, mainly the improved accuracy of the November 15 estimations.

The Joint Utilities also disagree with NYSERDA's proposed March 15 date by which the utilities must provide the actual number of VDER projects and corresponding REC generation following the obligation calendar year. Of chief concern to the

Joint Utilities is the lack of any reimbursement associated with projects and corresponding VDER RECs that may not be registered in NYGATS by the March 15 deadline. To address this concern, the Commission directs that first, the IOUs shall register all available projects and transfer corresponding VDER RECs per each price point into NYGATS by the March 15 date. NYSERDA will then be able to utilize these VDER Tier 1 RECs to meet their commitments resulting from the voluntary presale. Second, any remaining projects and VDER RECs not reported by March 15 will be duly reported by the IOUs in NYGATS 45 days prior to the end of trading in NYGATS, with these RECs included in the annual reconciliation. Third, any remaining VDER Tier 1 projects and RECs still not registered by 45 days prior to the NYGATS end of trading can be transferred to NYSERDA in NYGATS five days prior to the end of trading in NYGATS and would be included in the following year's VDER RECs forecast. NYSERDA will issue payment for these VDER RECs during the following year's reconciliation. While it is accepted that delayed registrations will exist, it is incumbent on all parties involved to review policies and procedures to identify approaches to eliminate these possibilities. The Joint Utilities shall work with NYSERDA during the preparation of the implementation plan directed below to present realistic estimations of any potential delays in registering projects and corresponding VDER RECs in NYGATS, including which IOUs are impacted. Additionally, for each project whose registration in NYGATS is delayed beyond March 15, the IOUs will submit to Staff a root cause analysis of why the project was delayed and how the process will be modified to prevent such delays from occurring in the future.

Finally, implementation of the approved processes will require the Joint Utilities to modify their tariffs to account for NYSERDA's purchase and credit of the utilities' VDER RECs.

The Joint Utilities are directed to file tariff amendments on not less than ten days' notice to become effective on a temporary basis on June 1, 2023, consistent with the new Tier 1 LSE compliance obligation processes adopted in this Order. As these tariff revisions will be filed in compliance with this Order and stakeholders have been provided an opportunity to provide comment, the newspaper publication requirements of PSL §66(12)(b) and 16 NYCRR §720-8.1 will be waived. Additionally, NYSERDA shall make any required changes to the NYGATS Operating Rules to implement the modifications adopted in this Order.

#### CONCLUSION

The Commission approves, with the modifications discussed in this Order, the proposed changes to the LSE obligations associated with Tier 1 of the CES. The Commission also approves, with modification, the proposed REC sale processes associated with the approved transition to a load share based obligation for the Tier 1 program. NYSERDA shall, within 30 days of the effective date of this Order, file an implementation plan detailing the new processes for calculating and collecting Tier 1 LSE obligations, including the REC sales processes discussed above, and as modified by this Order. Further, each of the Joint Utilities shall make a filing with the Commission, no later than 90 days from the effective date of this Order, describing the proposed accounting transactions, ratemaking treatment, and general accounting procedures associated with implementing the changes discussed in this Order related to the transition to a load share based obligation for the Tier 1 program.

The Commission orders:

1. The New York State Energy Research and Development Authority's Petition Regarding Modification of the Clean Energy Standard to Transition From a Defined Percentage Obligation to a Load Share Obligation is approved, with the modifications discussed in the body of this Order.

2. The New York State Energy Research and Development Authority shall, within 30 days of the effective date of this Order, file an implementation plan regarding the new processes for calculating and collecting Tier 1 Load Serving Entity obligations, including the Renewable Energy Certificate sales processes, as discussed in the body of this Order.

3. The New York State Energy Research and Development Authority shall, prior to implementation of the new Tier 1 load serving entity obligation structure adopted in this Order, make any modifications to the New York Generation Attribute Tracking System Operating Rules necessary to effectuate the adopted change to a load share obligation, consistent with the discussion in the body of this Order.

4. 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 and Electric Corporation are directed to file, in conformance with the discussion in the body of this Order, revised tariff leaves on not less than ten days' notice to become effective a temporary basis on June 1, 2023.

5. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1, that newspaper publication of the tariff amendments required in Ordering Clause No. 4 be completed prior to the effective date of the tariff amendments, are waived.

6. 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 and Electric Corporation are directed to make a filing, within 90 days of the effective date of this Order, describing the proposed accounting transactions, ratemaking treatment, and general accounting procedures associated with implementing the changes adopted in 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 three days prior to the affected deadline.

8. These proceedings are continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary

SUMMARY OF COMMENTSAES Clean Energy Development (AES)

AES supports the concept of a voluntary REC market in New York for all RECs. AES encourages NYSERDA to allow bilateral contracts between generators and voluntary off-takers for the Tier 1 REC market. AES noted that the voluntary market has benefitted developers who do not have Tier 1 contracts or baseline generators by providing flexibility and encourage competition. AES adds that if developers cannot directly contract with off-takers outside of NYSERDA-led contracts, as described in the Petition, they may look to sell RECs outside of New York. AES believes the Petition poses risks for Tier 1 generators by removing the merchant market and it is unclear if generators could sell their test power prior to contracts beginning or if they could sell excess power. The loss of the market for RECs outside of Tier 1 contracts could result in higher bid prices due to perceived increases risks by developers, AES added. Further, this new approach may remove revenue streams that Tier 1 developers had previously included in their bid pricing undermining their project finance viability. AES believes that expanding a pool of REC buyers such as municipal government, hospital, and universities, will reduce the costs borne by ratepayers. AES argues that fostering a competitive, healthy voluntary market is better for a long-term sustainability of the CES program.

Alliance for Clean Energy New York (ACENY) and Advanced Energy United (AEU)

ACENY and AEU have concerns regarding NYSERDA's proposed new approach. They suggest the Commission should conduct a technical conference to explore if issues raised by the proposal are in the public interest. ACENY and AEU recognize the administrative burdens created by continually

changing the LSE obligation and the added costs ACPs borne by ratepayers. Additionally, ACENY and AUE believe that the elimination of the ACP removes an economic signal tied to the State meeting its climate goals and the Petition does not propose any mechanism to replace the ACP to assure the climate goals are met. They also see the potential value in NYSERDA being authorized to sell Tier 1 RECs to voluntary purchasers like New York City. ACENY and AUE raise questions about the additionality of NYSERDA selling Tier 1 RECs into the voluntary market and suggest the issue should be further explored. ACENY and AUE believe that elimination of the ACP depends on NYSERDA continuing to drive the market forwards with solicitations and working to over project development delays. They argue if the central procurement model is working as intended, it would appear that the major redesign proposed by the Petition would not be necessary.

ACENY and AUE express that their major concern is the Petition's potential to chill or prevent opportunities for generators selling Tier 1 RECs directly to LSEs. They do not contest NYSERDA's argument that LSEs have not procured enough Tier 1 RECs outside of NYSERDA's REC procurements. However, their members have expressed interest in bilateral contracts between LSEs and Tier 1 REC generators. ACENY and AUE state the new approach proposed in the Petition negatively affects this nascent market in two ways. LSEs would lose an incentive to procure Tier 1 RECs from a seller other than NYSERDA if they were obligated to buy whatever number of RECs that NYSERDA had to sell. Also, ACENY and AUE argue that because the LSE would not know the number of RECs they need to procure or the price of the Tier 1 RECs, LSEs would not be able determine if a bilateral contract would be beneficial. ACENY and AUE note that LSEs could still be able to meet portion of their REC procurement

obligation by RECs directly from generators. ACENY and AUE believe that preserving the option for alternate market for Tier 1 REC procurement will encourage competition amongst developers and allow for alternative contracting structures. Further, the Petition does not address the treatment of jurisdictional LSEs that self-supply REC transactions. Due to the uncertainty of the price of NYSERDA Tier 1 RECs for sale, ACENY and AUE argue that LSEs may be motivated to hedge a portion of that risk by entering into a long-term bilateral contract. They state that LSEs should then have their REC purchase obligation reduced accordingly. In addition, ACENY and AUE argue that because the LSE's percentage obligation will not be known, and LSE may be less likely to pursue a multi-year bilateral contract with a generator.

ACENY and AUE are also concerned that selling Tier 1 RECs to the voluntary market may limit the ability of renewable generators without NYSERDA contracts to find direct buyers of their RECs in the voluntary market. If generators cannot participate in the voluntary market, they look to see RECs outside of New York. They urge the Commission to consider ways to maintain voluntary market for such voluntary buyers as ESCOs and CCAs. With the proposed new approach, they argue that the revised structure will not have the same impact on the voluntary market and may discourage some potential buyers. ACENY and AUE remain concerned that with NYSERDA dominating the voluntary REC market, they will be removing one of the remaining in-state market options for the existing generators.

ACENY and AUE support NYSERDA's approach to buy all the Tier 1 VDER RECs from the utilities. Their main complaint about this approach is that the pre-existing renewable do not receive the E-Value. ACENY and AUE argue that the eligibility for the E-Value under VDER is an important element to the

stability of the hydroelectric industry. They argue that small hydroelectric plants provide the same environmental benefits as distributed solar and should be eligible for the E-Value.

Azure Mountain (Azure)

Azure supports the move to the load share obligation as long as steps are taken to mitigate impact to uncontracted Tier 1 resources. Azure notes that the Petition does not address what will happen to Tier RECS which are not bought by NYSERDA. Azure argues that Tier 1 RECS not bought by NYSERDA will have no compliance value. They claim that the RECs would be downgraded to voluntary market EDP RECs such as those produced by "baseline" resources. Azure believes that while the move to load share approach will eliminate ACPs, it may create uncertainty. Azure adds that LSEs who are unable to predict future compliance costs will need to build the uncertainty into forward prices, a cost borne by consumers. Also, Azure argues that the proposed REC resale would greatly increase uncertainty. Azure states that the compliance costs become a function of not only the Tier 1 RECs NYSERDA buys but also the success of the resale. LSEs will not know their compliance costs for a given year until the year is over. Further, Azure argues that ESCOs offering fixed rates will be very hesitant to bet on successful resales so they will build this uncertainty into prices at the higher end. Azure adds that a successful resale is likely to result in increased profits for ESCOs rather than savings for consumers.

Azure notes that the renewable products sold by ESCOs and the growth in CCAs has resulted in a growth in revenue for the independent hydro producers. Azure believes that the growth in the voluntary market is the most beneficial for the stabilization of the renewable baseline resources. Azure is concerned about the available supply of RECs particularly under

forward contract structure. Azure anticipates that the presence of state REC supplier would lead to lower demand and lower prices for independent REC producers under the proposed structure. Azure asserts that the voluntary REC market is very new but lacks transparency and contains market friction. Azure believes that it is critical that existing resources have an in-state option for RECs. Azure argues that NYSERDA's presence would interrupt market evolution, set prices, and reduce opportunities for independent producers. There would be the benefit of increased REC supply for ESCOs and CCAs but at the expense of both consumers and independent producers. Further, Azure is concerned that the easy availability of RECs from NYSERDA would cause some to cease efforts to transact with independent producers even though NYSERDA's RECs would be priced above current market rates. Azure believes that this would affect of raising costs for consumers while reducing the value of the market for actual renewable power producers.

Azure argues that the move to the load share approach would not lower ratepayer costs but shift costs away from commercial and industrial consumers and onto residential consumers. Azure does not believe that the voluntary purchases of RECs from the State offers any additionality. It results in no additional revenue for renewable energy producers and does nothing to drive renewable energy development of the health of renewable resources. Azure recommends the Commission adopt the provisions in the Petition to Extend E Value to pre-2015 Resources in case 15-E-0751.

Azure asserts that predatory behavior continues in the ESCO market, and without additional controls, the REC resale may make NYSERDA complicit in these practices. Further, Azure notes that the ESCO Reset Order did not stipulate limits on the green premium maximum price or that the additional feed must be

limited to the cost of RECs. Azures states that they have not seen any diminution in the frequency with which we see ESCO supply rates they consider predatory. Azure argues that NYSERDA will not be able to discriminate with regard to who it sells Tier 1 RECs to so without additional controls, NYSERDA risks being complicit in the perpetuation of predatory ESCO pricing structures.

Azure proposes that LSEs should receive credit for compliance RECs in accounting for voluntary green products. Azure believes that requiring ESCOs to purchase voluntary RECs in volume equal to 100% of load served is unnecessary and artificially raises the cost of green products while contributing to voluntary REC supply constraints. By allowing ESCOs to count RECs purchased for compliance purposes toward their REC obligations would partially mitigate voluntary REC supply concerns without disrupting effects of a resale. Azure believes that NYSERDA should confine its resale to the following year because it would increase REC supplies without overtaking the voluntary market so completely. As a result, Azure says that ESCOs wishing to contract at firm forward prices would still be incentivized to develop relationships with independent producers but would have a backstop option to meet compliance needs once volumes are known.

#### Brookfield Renewables (Brookfield)

Brookfield believes that NYSERDA's new load share approach for the Tier 1 program will harm ESCOs' ability to properly manage price risk associate with an unknowable Tier 1 obligation. Brookfield acknowledges that there has been a mismatch in the Tier 1 obligation and the amount of Tier 1 RECS available. However, Brookfield argues that the percentage obligation for a compliance year provides LSEs the opportunity to their cost exposure and hedge appropriately. Brookfield adds

this new approach leaves LSEs particularly ESCOs seeking to offer a competitively priced fixed product without the ability to forecast with any amount of reasonable certainty what their annual CES cost obligation will be. Brookfield argues that without the ACP as an upper bound on price, NYSERDA will forecast the LSE Tier REC Rate. Brookfield asserts that because Tier 1 RECs are indexed, the swings in the estimated Tier 1 REC Rate for LSEs actualized price can be large and the impact will grow as the size of the LSEs obligation grows.

Brookfield states that it is unclear how the over/under collection will make its way back to customers. Brookfield believes that it is likely ESCOs will try and pass-through CES charges as opposed to taking a significant risk on predicting what the supply obligations are likely to be. Brookfield sees this scenario is likely to increase costs to consumers that are seeking an all-in fixed price to protect themselves against market volatility and only worsen over time. Brookfield believes that this is an evitable outcome of the proposed changes. Brookfield questions how big the difference will be between the price at the beginning of the year and the year-end reconciliation price. Brookfield urges NYSERDA and the Commission to be as accurate as possible with the beginning of the year forecasting.

Brookfield believes the Tier 1 voluntary sales to be problematic and requests the Commission consider modifications. Brookfield argues that the State has failed to design any viable mechanisms to support its existing renewable energy baseline. Brookfield notes that the lack of programmatic support has led existing renewables to seek value for their attributes in other areas. Brookfield adds that NYSERDA's petition is sending a message to its renewable energy baseline resources that not only is there no CES or other programs available but not it intends

to enter the voluntary market as a direct competitor to those resources. At a minimum, Brookfield argues that the Commission should limit NYSERDA to just the resale component of the petition and not the requested presale or long-term contracting proposals. If NYSERDA underestimates the price of the Tier 1 RECs for a given year, Brookfield believes that the undervalued prices will carry through that year as an arbitrarily low ceiling for other entities looking to sell their Tier 1 RECs in the voluntary marketplace. Brookfield argues that non-contracted Tier 1 RECs should have the opportunity to sell those RECs to NYSERDA in the voluntary market by having a standing bid at its resales for any resources that meet Tier 1 requirements. This opportunity may drive generators to seek out upgrades to achieve Tier 1 eligibility without having to go through the Tier 1 RFP process.

Brookfield supports the petition's proposal to modify the treatment of VDER Tier 1 RECs. Brookfield argues that the petition's proposal for VDER Tier 1 RECs is easily applicable to pre-2015 DER resources as well. Brookfield adds that RECs associated with pre-2015 could receive the same proposed treatment of Tier 1 VDER RECs.

City of New York (the City)

The City agrees with NYSERDA that the ACPs have not served the purpose for which they were intended. The City supports NYSERDA's proposal to eliminate ACPs. The City also supports NYSERDA's proposal to modify Tier 1 to be similar to the structure of the other CES programs. The City argues that transforming Tier 1 to "pay-as-you-go" approach seems reasonable and appropriate. The City is concerned that the proposal only allows NYSERDA to engage in the voluntary sales of Tier 1 RECs to customers, ESCOs, CCAs, and others. The City adds that some entities may purchase more RECS than they need but are unable to

re-sell the excess RECs. The City believes that creating a quasi-voluntary market wherein only one entity can sell RECs has the potential to exacerbate the problem of there not being enough RECs available to satisfy demand. The City recommends the Commission allow entities to re-sell excess RECs. Further, the City recommends allowing building owners and Con Edison to sell their VDER RECs to other building owners in New York City to help satisfy their unique demand.

Community Choice Aggregation Administrators of New York (CCAANY)

CCAANY notes that under the petition, CCA programs would not be able to purchase Tier 1 RECs because CCA programs must be able to access a fixed rate over 18-36 months contracts at a known price for its mass market customers. As such, CCA would not be able to participate in the Tier 1 purchase structure is a once annual 14-day presale period for RECs covering the following year. CCAANY argues that CCAs need to be able to access RECs for longer than a 12-month period and more than once a year. CCAs contracting would have to be in sync with timing of REC purchases. CCAANY adds that utilities would not be able to manage the volume of CCA enrollment created by syncing all contracts to align with REC purchasing constraints. CCAANY argues that CCAs would only be able to participate in the proposed Tier 1 voluntary market if there is a quarterly access to RECs.

CCAANY asserts that CCA load and associated RECs may fluctuate and CCAs need the ability to transfer RECs within NYGATS. Further, CCAANY argues that the move toward a load share obligation is a perfect opportunity to align CCA requirements with the requirements of all other mass market customers making voluntary claims.

Cornell University (Cornell)

Cornell notes that they have made substantial progress in meeting long-standing voluntary energy goals with the support of many State programs but have also encountered challenges and inconsistencies with both the distributed energy market and the large-scale renewable market. Cornell argues that the current State policy favors central procurement and discourages voluntary participation by the commercial and industrial sector in the large-scale renewable market. It makes it difficult for city-scale energy consumption to achieve renewable energy goals. Cornell says that the Index REC pricing structure has had the effect of pricing voluntary C&I market out of the State's large-scale market. Plus, it is not compatible with existing voluntary market contract structures because an Index REC contract combined with virtual power purchase agreements (vPPA). vPPAs that included replacing Tier 1 project RECs with national RECs were effective strategy for achieving viable LSR project economics in NY state by allowing the developer to monetize the Tier 1 RECs to NYSERDA or LSEs. Campuses may have to resort to purchasing costly unbundled RECs. Cornell explains that it satisfied most greenhouse gas accounting protocols for voluntary commitment it is problematic in other ways. Cornell argues one problem is that national RECs do not support the development of new renewable energy resources. Cornell states that the NYSERDA petition proposes a change such that LSEs would instead be obligated to procure all Tier 1 RECs made available by NYSERDA after a voluntary sale opportunity in part to lower customer costs. However, Cornell notes that these unbundled RECs would not meet the requirements nor support the benefits of bundled RECs.

Cornell also argues that on-campus renewable energy generation capacity is space is limited. There is not enough

rooftop or open space on most campuses to generate more than a small percentage of annual electricity needs. Further, Cornell argues that the VDER tariff makes REC retention uneconomical and remote crediting satellite accounts are limited to 5 MW, not larger enough for most campus meters.

Cornell adds that CCAANY and Family Energy have pointed out some more specific challenges with the proposal such as prohibitions on REC transferability for voluntary market accounts, timing, and contractual option.

Family Energy. Inc (Family Energy)

Family Energy supports retention of the current approach. Family Energy believes that the new approach makes it more difficult for an ESCO to properly build these costs into retail pricing if the ESCO does not know what its final requirement is until the end of a reporting year. Family Energy argues that having a prescribed percentage of Tier 1 RECs that an ESCO needs to buy, ensures the ESCO can model its retail price to the consumer is as sharp as possible. Family Energy adds that it results in more competitive pricing in the retail marketplace and benefits customers.

Joint Utilities (JU)

The JU support certain elements of NYSERDA's proposal, including the elimination of ACPs which impose costs on customers. The JU urge the Commission to modify the proposal to address administrative challenges due to the timelines of Tier 1 management. The JU argue that the gap in time between when the JU pay customers for the Environmental Value (E-Value) of the VDER Value Stack tariffs and when NYSERDA proposes to pay the JU for the associated VDER RECs unnecessarily imposes costs on utility customers during the period until NYSERDA compensated the utilities for the VDER RECs. The JU note that NYSERDA asserts that the magnitude of the proposal's financial burden

would not be an economic hardship. The JU state that NYSERDA offers no explanation for the reasonableness of this burden, which would ultimately fall on utility customers, when other solutions are available. The JU point out that while they are paying VDER Value Stack customers for their generation on a monthly basis, they are also pay NYSERDA for Tier 1 RECs on a monthly basis. They would not receive reimbursement for the VDER payments to customers no earlier than seven months after the end of the compliance year. The JU state that these cash outlays will exceed \$70 million annually in future years should the Commission adopt NYSERDA's proposal. The JU urge the Commission to direct NYSERDA to net Tier 1 REC obligations with RECs generated by VDER Value Stack resources in a manner similar to the load modifier contribution that is now used to minimize ZEC billing reconciliations based on NYISO invoices. The JU believe this alternative proposal will reduce monthly customer bills and minimize the annual compliance year reconciliation and better align the NYSERDA process with utility customer payments. The JU suggest another alternative proposal where NYSERDA could conduct a quarterly reconciliation process instead. This process would also reduce cash outlay and associate customer costs for each utility.

Additionally, the JU recommend that the Commission direct NYSERDA to conduct forecasting of VDER generation in a two-stage process. First, the JU state they would provide preliminary forecasts of VDER Value Stack generation by June 15 of each year which will allow NYSERDA to conduct its presales on the calendar it specified in the petition. Second, the JU will provide updated estimates - based on more current data-on November 15 for NYSERDA to use to calculate REC rates that would apply at the beginning the following year. The JU argue that

this would make the REC rate more accurate and diminish the magnitude of the compliance reconciliations.

The JU support NYSERDA's objective to replace the existing E-Value cost recovery mechanism but not issues for the reporting requirement. The JU urge the Commission to establish a reporting requirement deadline for VDER procurement REC reports on June 30 of the year following a compliance year, instead of NYSERDA's proposed March 15 of each year. The JU add that that change will aging the actual VDER REC registration, reporting and reconciliation deadline and end of prior year trading period with the requested information.

The JU also recommend that the Commission direct NYSERDA to purchase all remaining banked VDER REC produced through the last year of the current program. The JU recommend that the Commission direct NYSERDA to implement measures to mitigate excess volatility in year-to-year Tier 1 REC costs. Further, the JU add that the Commission should direct NYSERDA to limit deviation in Tier 1 obligation costs from one year to the next to protect utility customers from potentially volatile cost swings. The Commission can direct NYSERDA to deploy pre-collected funds for the benefit of customers in years when the difference in compliance costs from the prior compliance period exceeds a specific threshold.

#### Multiple Intervenors (MI)

MI agrees with NYSERDA that transition to a load share obligation approach should reduce CES compliance costs to customers and it is the public interest. MI notes that this approach would eliminate any need for the LSEs to make ACPs. MI sees no purpose for ACPs other than to drive up the Tier 1 compliance costs on customers. MI recommends the Commission approve NYSERDA's proposed modification of Tier 1. MI argues that if NYSERDA is authorized to sell RECs in the voluntary

market then additional information is needed as to how it would be implemented. MI believes that the cost reduction measures proposed by NYSERDA are important given the magnitude of the CLCPA-related costs. MI generally supports the voluntary sales of RECs but recommends increased transparency as to how it would be implemented, including how the sales price would be set. Further, MI believes that an entity should be able to resell the RECs that it no longer requires.

Vistra Corp (Vistra)

Vistra believes that under NYSERDA's proposal, ESCOs will become a payment collection tool for the Tier 1 program by collecting costs of Tier 1 compliance from their customers and remitting that to NYSERDA for the associated RECs. Vistra notes that ESCOs may have an obligation but go bankrupt or leave the State without fulfilling their obligation either artificially increasing the obligation for all LSEs or leaving NYSERDA without complete cost collection for Tier 1 RECs. It will be impossible for ESCOs to offer fixed priced products to residential customers without undertaking unknown future costs. Vistra adds that requiring ESCOs to price based on the utility's historic prices without any qualification of future costs to mass market customers is a questionable business decision and may reduce the number of ESCOs willing to offer such product. Vistra supports shifting the costs from LSEs to the seven New York utilities on the delivery portion of customer's bills. Vistra believes that the utilities are better to handle the reconciliation process. Further, utilities have the advantage to provide cost transparency to customers. Vistra provides examples of enhancements to the petition to align with the other state's renewable portfolio standards.

Vistra suggests that NYSERDA procure the Tier 1 RECs from developers, retire the RECs in NYGATS and, through

percentage of load share obligations, allocate the attributes to each LSE for development of annual EDP label. Then, utilities would facilities the collection from all ratepayers to fund NYSERDA Tier 1 procurement. While Vistra agrees with NYSERDA that moving to a load share approach would be more operationally efficient and cost effective, it would no longer be practical for ESCO to be the cost collection agent for the Tier 1 RECs. Vistra adds that the utilities are better suited for cost recovery from all ratepayers on their delivery bills.