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August 9, 2021

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Three Empire Plaza
Albany, New York 12223-1350

Re: Case 15-E-0302 – Tier 2 Resale Proposal

Dear Secretary Phillips:

The Alliance for Clean Energy New York, on behalf of our member companies, submits for filing the attached comments in response to the “Clean Energy Standard Tier 2 Re-sale Implementation Plan Proposal” (“Resale Proposal”) filed by Staff of the New York State Energy Research and Development Authority (“NYSERDA”) and Staff of the New York State Department of Public Service (“DPS”) (collectively “Staff”) on May 1, 2021.

Respectfully submitted,

Anne Reynolds
Executive Director
Alliance for Clean Energy New York

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

_____)
Proceeding on Motion of the Commission to)
Implement a Large-Scale Renewable Program)
and a Clean Energy Standard.)
_____)

Case 15-E-0302

COMMENTS ON CLEAN ENERGY STANDARD TIER 2 RE-SALE IMPLEMENTATION PLAN PROPOSAL

August 9, 2021

I. Introduction and Background

In response to the *Notice Concerning Comment Period* issued by the New York State Public Service Commission (“Commission”) on July 20, 2021, in Case 15-E-0302, the Alliance for Clean Energy New York (“ACE NY”) hereby submits these Comments on the *Clean Energy Standard Tier 2 Re-Sale Implementation Plan Proposal* (the “Proposal”). The Proposal was submitted by the New York State Energy Research and Development Authority (“NYSERDA”) on May 3, 2021.

Treatment of Tier 2 resources, *i.e.*, renewable electricity generators that began operation in New York before January 1, 2015, is an important issue to ACE NY member companies and organizations as it is a critical component to New York’s overall plan to achieve the 70% by 2030 renewable electricity mandate included in New York’s Climate Leadership and Community Preservation Act (“CLCPA”).

The Alliance for Clean Energy New York (“ACE NY”) is a member-based organization with a mission of promoting the use of clean, renewable electricity technologies and energy efficiency in New York State to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Our diverse membership includes companies engaged in the full range of clean energy technologies as well as consultants, academic and financial institutions, and not-for-profit organizations interested in our mission.

ACE NY has consistently supported the establishment of a Competitive Tier 2 in the Clean Energy Standard that includes both a NYSERDA procurement program and an obligation to support the program for load serving entities (LSEs). We appreciate that NYSERDA originally proposed this

program in its *Petition Regarding a Clean Energy Standard Competitive Tier 2 Program for Baseline Renewable Generation*, (the “Tier 2 Petition”) submitted on January 24, 2020, in Case 15-E-0302, not long after the Governor’s veto of Senate Bill 23/Assembly Bill 4294. Further, the passage of the CLCPA, which establishes New York’s ambitious renewable electricity goals in law, heightened the need for New York to retain its existing baseline of renewable generators. In his veto message for S.23/A.4294, issued December 13, 2019, Governor Cuomo stated, “The CLCPA requires the PSC to establish a renewable energy program to achieve the State’s ambitious clean energy goals and in doing so, it is imperative that the State take measures to ensure the continued viability of its legacy renewable energy resources in order to reach these goals.”

Thus, the motivation for establishing a competitive Tier 2 to ensure the viability of these legacy resources is to retain the baseline of pre-2015 renewable resources that might otherwise be exported or retired. Based on NYSERDA’s December 2019 Clean Energy Standard Annual Progress Report: 2018 Compliance Year, there were 63,405 megawatt-hours (MWhrs) of pre-2015 hydroelectric generated electricity exported out of New York in 2017, but 178,056 MWhrs exported in 2018. This is not a positive trend.

The goal of the Competitive Tier 2 Program should be to maintain the baseline of renewables to achieve 70% by 2030 and 100% by 2040 at least cost. In Comments submitted by ACE NY in May 2020 on the NYSERDA Tier 2 Petition, ACE NY recommended that the program be permanent and use a more aggressive procurement schedule to better achieve its goals, i.e., a higher percentage (75%) of the baseline be procured in each year. We also recommended that the program should not have an arbitrary expenditure cap. **Finally, we supported the idea that the Competitive Tier 2 program procure RECs for the voluntary market but only if a larger percentage of the available pool was procured.**

II. NYSERDA should only re-sell Tier 2 RECs if it procures a large percentage of Tier 2 pool.

In Comments on the NYSERDA Tier 2 Petition, dated July 24, 2021, ACE NY specifically stated,

“A competitive Tier 2 should be established in the Clean Energy Standard (“CES”) to maintain the baseline of legacy renewable energy generators in New York. The re-sale of Tier 2 RECs to the voluntary market should only be authorized if a high percentage of the Tier 2 pool is procured each year.”

In contrast, NYSERDA’s 2020 Tier 2 Petition proposed to procure one-third of the resources in each of three years. This approach leaves a significant portion of the baseline stranded and waiting to sell RECs to NYSERDA, which has a high risk of leading to the export or retirement of these resources in the meantime. To reduce this risk – and in keeping with the goal of this program –

ACE NY recommended that a higher percentage of the baseline be procured in each year. Specifically, we suggested that NYSERDA should procure 75% of the available baseline of eligible MWh in the first solicitation. Then, any baseline generators not under contract (through Tier 2, Maintenance Tier, or RPS) would have the opportunity to participate in subsequent annual solicitations where again 75% would be procured. This approach would have ensured that the program is competitive but would retain more of New York's renewable baseline sooner.

Our recommendation to procure 75% of the Tier 2 pool each year -- which was not accepted by the Commission -- is directly related to the issue of re-selling Tier 2 RECs to the voluntary market.

In various filings related to Tier 2, we consistently supported the re-sale of Tier 2 RECs to the voluntary market under a scenario where 75% of the Tier 2 pool is procured each year. Under this scenario, a super-majority of the pool would have had the opportunity to obtain a contract and the voluntary market would then have access to Tier 2 RECs by purchasing them from NYSERDA. But if NYSERDA only procures one-third of the Tier 2 pool each year -- or less -- and also sells Tier 2 RECs to the voluntary market, the remaining two-thirds will have no opportunity in the voluntary market as they will, by definition, be higher priced. (That is, it will be the higher priced RECs that NYSERDA doesn't buy and thus doesn't re-sell.) By procuring such a small percentage of the available Tier 2 RECs and then re-selling them, NYSERDA would be eliminating the opportunity for the remaining RECs to sell to the voluntary market.

In short, our two recommendations went together: procure 75% each year and re-sell to the voluntary market to reduce the obligation for LSEs for the Tier 2 Program. In the Tier 2 REC Resale Proposal, Staff notes, "In their comments on the proposed Tier 2 Program, various stakeholders supported the idea of re-selling the Tier 2 RECs to the voluntary market based upon the concern that NYSERDA would purchase the majority of the Environment Disclosure Program (EDP) eligible RECs and that by doing so NYSERDA's purchases would adversely impact the voluntary market." We did not recommend, and we still do not recommend, that NYSERDA re-sell RECs to the voluntary market if only one-third of the pool is procured each year for three years.

III. NYSERDA is not obligated to re-sell Tier 2 RECs.

Second, ACE NY offers that NYSERDA is not obligated to re-sell Tier 2 renewable energy certificates ("RECs"). That is, the Commission's *Order Adopting Modifications to the Clean Energy Standard*, issued October 15, 2020, stated that the "proposal to allow NYSERDA to re-sell Tier 2 RECs that it purchases from generators is adopted," but did not state that NYSERDA **must** re-sell these Tier 2 RECs.

IV. The Tier 2 Program did not procure significant RECs.

The first Competitive Tier 2 Program solicitation resulted in the procurement of RECs from three legacy renewable facilities, totaling 13.9 MW. Applying a 50% capacity factor, that equates to approximately 60,000 RECs per year. But the *Clean Energy Standard Annual Progress Report: 2019 Compliance Year* reports a total renewable energy baseline in 2019 of 40,675,208 MWh. Even though NYPA accounted for a significant portion of that total, roughly 25,000,000 MWh, the remaining baseline would be roughly 15,000,000 MWh, and the contracted 60,000 RECs would be a small percentage of the total non-NYPA baseline. This is an indication that the Tier 2 Program – so far – is not meeting its goals. It certainly is not procuring one-third of the available pool.

V. New York’s Community Choice Aggregation Program should align with New York’s efforts to retain legacy renewables (and build new renewables.)

Commission Staff recently issued a White Paper on Community Choice Aggregation (CCA) Programs that highlighted certain issues, including a rise in REC market prices and a low price for utility standard supply. The White Paper notes, “When EDP compliant requirements were adopted for use in CCA program renewable product offerings it was not foreseen that current utility supply pricing would be so low or that EDP compliant RECs would be difficult to obtain for a reasonable price. Recognizing this has the potential to significantly impact CCA program participation, Staff is seeking input on alternative product structures that, while potentially not EDP compliant, would still allow a municipality the ability to choose an environmentally beneficial product offering on an opt-out basis for its constituents.”

ACE NY suggests that the Tier 2 Resale Proposal, while indicating a goal of supporting the voluntary market, will not solve this problem. We also wish to highlight our strong opposition to the solution to this issue being to allow CCAs to sell out-of-state RECs because they are cheaper than NYS RECs. That approach will not support the State’s goals of maintaining legacy renewables or building new renewables and does not, in fact, support any policy goals. If that approach is taken, together with the Tier 2 Resale Proposal, then an in-state legacy renewable generator attempting to sell RECs will then be competing with *both* a cheaper Tier 2 REC from NYSEDA and a cheaper non-CES compliant REC from out of state. This approach should not be taken.

VI. Re-sale of Tier 2 RECs should occur after 75% of the Tier 2 pool is procured.

For all the reasons stated above, NYSEDA should not proceed with re-sale of Tier 2 RECS to the voluntary market prior to procuring 75% of the available Tier 2 pool. After that threshold is met, NYSEDA may consider re-selling Tier 2 RECs to the voluntary market and can decide at that time

if the reduction in the cost of the LSE obligation that would result from the re-sale is in the public interest. The structure of the re-sale process outlined in the Proposal seems reasonable.

VII. Additional Input on Tier 2 Solicitation

As mentioned above, the first NYSERDA Competitive Tier 2 Proposal did not result in a significant quantity of Tier 2 RECs being procured. ACE NY continues to reiterate several of the recommendations included in our previous comments on Tier 2 (dated May 4, 2020, and July 24, 2020, in this proceeding). For example:

- The Confidential Maximum Bid Price should be designed to procure at least 75% of the available pool. Because it would represent a savings for ratepayers as compared to procuring RECs from new Tier 1 facilities, it would be appropriate to set it at any level under the Tier 1 price or, at a minimum, at 75% of the prevailing Tier 1 REC price.
- To increase participation in the solicitation, NYSERDA should allow any holder of the REC to bid and sell to NYSERDA, including a joint-venture and/or an aggregator of Tier 2 RECs.
- To increase participation in the solicitation, NYSERDA should be more flexible about allowing a portion of a facility's RECs to be sold to NYSERDA and/or for the "first" RECs to be sold to NYSERDA. A facility should not have to have NYSERDA be its primary and only offtaker to participate in the Tier 2 Program.

VIII. Conclusion

Thank you for the opportunity to comment on the *Clean Energy Standard Tier 2 Re-Sale Implementation Plan Proposal*. While the mechanics of the re-sale proposal are sound, ACE NY objects to NYSERDA re-selling Tier 2 RECs when such a small percentage of the Tier 2 pool has been procured by NYSERDA, because we would like to preserve opportunities for Tier 2 generators that are not able to sell their RECs to NYSERDA to sell to the voluntary market. Further, the CCA Program should not allow the sale of out-of-state RECs, as that would be counter to State goals. Finally, we respectfully suggest that some modifications to the Tier 2 Program could enhance participation in the program and increase NYSERDA Tier 2 procurement.