

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

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Case 15-E-0302

**NYSERDA Petition Regarding a Clean Energy Standard Competitive Tier 2 Program:  
Comments from the Alliance for Clean Energy New York**

May 4, 2020

## INTRODUCTION AND SUMMARY

The Alliance for Clean Energy New York submits the following comments in response to the New York State Energy and Research Development Authority (NYSERDA) Petition Regarding a Clean Energy Standard Competitive Tier 2 Program for Baseline Renewable Generation to the New York Public Service Commission (Commission). This Petition was submitted in Case 15-E-0302 on January 24, 2020. 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, in order 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.

**The Clean Energy Standard Needs a Competitive Tier 2.** ACE NY supports the establishment of a Competitive Tier 2 in the Clean Energy Standard that includes both a NYSERDA procurement program and a new obligation to support the program for load serving entities (LSEs). We appreciate that NYSERDA has proposed this program in its petition, especially in light of 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, heightens the need for New York to retain its existing baseline of renewable generators. Establishing an efficient and successful Tier 2 is more necessary than ever. 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."

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. If this trend continues, New York's baseline resources will continue to erode, undermining the progress towards the 70% goal that will result from the construction of new wind and solar projects. Further, retirement of small hydroelectric facilities is a real risk, one that will be increased as electricity demand from the grid reduces due to an economic downturn brought on by the COVID-19 health crisis. While we sincerely hope that this contraction of New York's economy is short-lived, the electricity demand reduction will increase economic pressure on these facilities to retire by lowering wholesale electricity prices. Simply put, New York needs to compensate Tier 2 resources for their renewable attributes in an effort to retain our renewable baseline.

## RECOMMENDATIONS FOR A STRONGER TIER 2

ACE NY has the following recommendations to strengthen the competitive Tier 2 program that NYSERDA has proposed in its Petition:

**1. THE GOAL SHOULD BE TO MAINTAIN THE BASELINE IN ORDER TO ACHIEVE 70% BY 2030 AND 100% BY 2040, AT LOWEST COST, AS REQUIRED BY THE CLCPA.**

When considering the various design options for a competitive Tier 2, , we ask that the Commission always consider that the goal is to maintain the baseline to achieve 70% renewable electricity by 2030 and 100% emissions-free electricity by 2040, as mandated by the CLCPA, and to do so at the lowest cost to ratepayers. Reflecting on this goal should influence the Commission's consideration of many of the recommendations outlined below. For example, this goal would necessitate a program that is longer than three years; has a better chance at procuring more Tier 2 resources; doesn't use an arbitrary expenditure cap; and takes other policy opportunities to retain Tier 2 resources in New York, such as through VDER or the voluntary market.

**2. THE PROGRAM SHOULD BE PERMANENT AND USE A MORE AGGRESSIVE PROCUREMENT SCHEDULE TO BETTER ACHIEVE ITS GOALS.**

First, the Petition proposes three years of three-year contracts: 2021-2023, 2022-2024, 2023-2025. This means that all contracts would be expired by 2025, five years before the 2030 statutory deadline in the CLCPA. This approach does not align with the primary goal of supporting achievement of the 70% by 2030 mandate. To truly meet the goal of a Competitive Tier 2 Program, the program should rightly be permanent. At a minimum, it should involve nine years of three-year contracts so that in 2030, the majority of the baseline might still be contracted. Under this approach, baseline resources may potentially enter into contracts with NYSERDA three times, allowing Tier 2 REC prices to adjust to market conditions but still offering the potential for compensation through 2030 that will encourage resources to reinvest in necessary maintenance and not pursue export opportunities.

Second, the Petition proposes to procure 1/3 of the resources in each of three years.<sup>1</sup> This approach requires that a significant portion of the baseline waiting to sell RECs to NYSERDA, which has a high risk of leading to the export or retirement of these resources in the meantime, as highlighted by the trends reported in the 2019 CES Progress Report referenced above. To reduce this risk – and in keeping with the goal of this program – we recommend that a higher percentage of the baseline be procured in each year. For example, NYSERDA should procure 75% of the available baseline of eligible MWhr 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 still ensures that the program is competitive but would retain more of New York’s renewable baseline sooner.

We also ask the Commission to require that the Competitive Tier 2 Program be transparent as to the size of the pool of Tier 2 RECs available each year and the amount that NYSERDA intends to procure each year. A stronger overall plan for achieving 70% by 2030 is one that ‘counts’ only those RECs procured by NYSERDA and/or retired on behalf of the Clean Energy Standard, so as to encourage the voluntary market to truly be additive.

### **3. THE PROGRAM SHOULD NOT HAVE AN ARBITRARY EXPENDITURE CAP**

To achieve its goal, the Competitive Tier 2 Program should not have an arbitrary overall expenditure cap. Without the \$200 million cap proposed in the Petition, there would still be the confidential maximum bid price (also proposed in the Petition), which would rightly serve as the mechanism for NYS to control expenditures. If, for example, bids from baseline generators are well below the prevailing Tier 1 REC price and would obviate the need for NYSERDA to procure Tier 1 RECs to achieve 70% by 2030, it would make sense to utilize Tier 2 procurement up to the confidential maximum bid price.

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<sup>1</sup> The Petition could be interpreted to propose to procure 1/3 of the baseline in year 1, 1/3 of the remaining 2/3 in year 2, and 1/3 of the remaining in year 3, which would procure roughly 70% of the baseline in total.

Meanwhile, the confidential maximum bid price should be established by NYSERDA through consideration of the prevailing Tier 1 REC price, since this essentially represents the cost to New York to replace the resource if it exports its RECs or retires. Although ACE NY is always enthusiastic about NYSERDA procuring Tier 1 RECs and attracting new investment to New York, it makes sense to procure all baseline resources that bid at a level under the replacement cost. This concept was explored in detail in *Policies to Cost-Effectively Retain Existing Renewables in New York*, prepared by Synapse Energy Economics, issued December 22, 2017, which was filed by ACE NY in this proceeding in 2017.

**4. THE COMPETITIVE TIER 2 PROGRAM SHOULD PROCURE RECs FOR THE VOLUNTARY MARKET and SUPPORT A ‘MADE IN NY’ CLEAN ENERGY PRODUCT.**

In its Petition, NYSERDA consistently expresses the desire of New York to promote the voluntary market for renewable energy. This desire has been consistently expressed by the Commission and NYSERDA for at least fifteen years, including during the design and establishment of the Renewable Energy Portfolio Standard program. And while there is a voluntary market in New York, it has never driven significant renewables investment in our state, for a variety of reasons.

The establishment of a Competitive Tier 2 Program offers a new opportunity for NYSERDA to better support development of the voluntary market in New York. Towards this goal, we ask the Commission to consider authorizing NYSERDA to offer Tier 2 RECs for sale to any entities interested in procuring – either for their own use or for sale – a *Made in New York Green Energy* product. NYSERDA’s customers in this endeavor could include energy service companies (ESCOs), utilities, Community Choice Aggregation Programs (CCAs), or end users. By selling a portion of the Tier 2 RECs that it procures to the voluntary market, the cost of the Tier 2 obligation for all LSEs would be reduced. The RECs sold to the voluntary market would reflect the premium that voluntary buyers are willing to pay for these RECs, rather than the as-bid REC price in NYSERDA’s three-year contract with the baseline generator.

NYSERDA could structure their sale of Tier 2 RECs to the voluntary market in a variety of ways. NYSERDA may, for example, want to structure sales to the various segments of the voluntary

market (e.g. corporate, ESCOs, utilities, CCAs) differently to account for their different characteristics. In any case, the opportunity to procure from NYSERDA will reduce some risks in the voluntary market and thus likely overcome a market barrier. It will also protect some Tier 2 generators from the risks of contracting directly with end users or LSEs. All of the Tier 2 RECs not sold by NYSERDA to the voluntary market would be retired by NYSERDA as described in their Petition. Further, any Tier 2 generator would still be able to pursue direct sales of RECs or bundled RECs plus energy to an end user if they found a willing buyer.

## **5. NYS SHOULD PURSUE OTHER POLICY MEASURES TO SUPPORT TIER 2 RESOURCES**

We also suggest that other policies could assist in the retention of Tier 2 resources and thereby reduce the total cost of the Competitive Tier 2 Program, such as:

- (1) supporting NYISO's efforts to integrate a carbon price in the wholesale markets, as described in ACE NY's December 2019 paper *Building Clean Energy in New York: the Case for Carbon Pricing at the NYISO* (available at [www.aceny.org](http://www.aceny.org));
- (2) allowing Tier 2 resources to receive the E-value in the VDER value stack if they transition to become a community distributed generation (CDG) project;
- (3) considering allowing energy service companies to transition their existing customer base to a *Made in New York Green Energy* product by purchasing Tier 2 RECs (as long as ratepayer costs were fair and reasonable and the initiative was transparent); and
- (4) allowing all of the output from repowered facilities to qualify as a CES Tier 1 resources.

All four of these recommendations are reasonable policy changes that will support Tier 2 resources; help New York achieve the mandates of the CLCPA by maximizing output from legacy resources; and reduce the direct costs of a new Competitive Tier 2 Program.

## **CONCLUSION**

ACE NY sees retention of the baseline of renewable electricity generators as an important component of the overall strategy to achieve 70% renewable electricity by 2030, as well as 100% emissions-free electricity by 2040, as required by law. Therefore, we actively supported Senate Bill 23/Assembly Bill 4294 and were sorely disappointed that this measure was vetoed by

Governor Cuomo at a time when New York was adopting even more ambitious renewable electricity mandates. In that veto message, Governor Cuomo directed NYSERDA to propose a Competitive Tier 2 to the Commission, and we appreciate that directive and NYSERDA's efforts to design this proposal.

With respect to **eligibility for this program**, we recognize that NYSERDA is proposing to limit eligibility to those resources now defined as renewable under the CLCPA, which is appropriate given that new legal framework. Still, we do want to take this opportunity to note that the Renewable Portfolio Standard, the first two years of the Clean Energy Standard, and New York's net metering regime had previously recognized fuel cells, anaerobic digestion, and sustainable biomass as renewable in New York. Each of these technologies brings important co-benefits. Fuel cells do not involve any fuel combustion, so they are significantly cleaner than fossil generation and their deployment and use offers the possibility of a future transition to renewable gas. Anaerobic digestion projects avoid the release of methane, a potent greenhouse gas, to the atmosphere, and the ability to sell electricity will reduce the operating costs of projects for food collection and composting. They can also be a source of income to wastewater treatment plants. Lastly, New York's strict definition of sustainable biomass meant that only clean biomass, largely waste material from forestry operations, was used in a small number of New York projects. This offered the potential for a small amount of dispatchable renewable energy that also supported New York's forestry industry. ACE NY is hoping that this eligibility requirement can be reconsidered in light of these co-benefits and New York's ambitious 100% emissions free by 2040 mandate. Also related to eligibility, we appreciate that the Petition clarifies that projects that have a portion of their output contracted for the sale of Tier 1 RECs can still sell the non-contracted portion of their generation in the Competitive Tier 2 Program.

ACE NY supports the Commission's acceptance of NYSERDA's Petition, with the specific recommended design changes proposed herein. In its Petition, NYSERDA requests the ability to issue a Tier 2 RFP in 2020. We respectfully request that the Commission consider these recommended changes and timely issue an Order authorizing NYSERDA to commence a

Competitive Tier 2 Program in 2020, with clear information regarding the Tier 2 certification process requirements, as soon as possible, as time is of the essence in retaining these valuable resources. Specifically, we suggest that a stronger Competitive Tier 2 Program would be one that lasts through 2030; procures 75% of the pool of Tier 2 RECs each year; and uses a confidential maximum bid price but not an overall expenditure cap. Lastly, we suggest that there are specific policy changes that New York could embrace, enumerated above, that would assist in the retention of Tier 2 resources and thereby reduce the cost of the Competitive Tier 2 Program.

Thank you for the opportunity to submit these comments.