STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, abstaining
James S. Alesi

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

ORDER APPROVING PHASE 2 IMPLEMENTATION PLAN

(Issued and Effective November 17, 2017)

BY THE COMMISSION:

INTRODUCTION

The Commission's August 2016 Order provided a framework for the Clean Energy Standard (CES) and established a goal, consistent with the New York State's Energy Plan and Reforming the Energy Vision (REV), that 50% of the electricity consumed by New Yorkers is to be generated by renewable energy sources by 2030 (50 by 30 goal).[1] The CES Framework Order acknowledged that additional implementation measures would be necessary to fully implement the CES that would be addressed through a series of successive Commission actions. A Phase 1

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

Implementation Plan was approved by the Commission in February 2017.[2]

On May 12, 2017, Department of Public Service Staff (Staff) and New York State Energy Research and Development Authority (NYSERDA) submitted the Clean Energy Standard Phase 2 Implementation Plan Proposal (Phase 2 Proposal) to continue addressing issues for implementation for the 2018 program year. In this Order, the Commission approves the Phase 2 Proposal with some modifications; and requires submission of a final plan in accordance with this Order within 30 days of its issuance.

SUMMARY OF FILING

The Phase 2 Proposal continues to provide guidance for implementing and satisfying the requirements of the CES. Specifically, the proposal:

1. Documents Staff’s review of the annual Renewable Energy Standard (RES) targets for the mandated obligations of Load-Serving Entities (LSEs) for 2018 through 2021, with recommendations for modifications.
2. Recommends establishing a protocol for the application of an annual divergence test for the targets, which may trigger an interim review by the Commission.

[2] By Order dated February 22, 2017, the Commission approved, with some modifications, the CES Phase 1 Implementation Plan Proposal, which addressed details on eligibility and certification of renewable energy resources to qualify for Tier 1 Renewable Energy Credits (RECs); filing requirements and processes to support certain eligible resources under the maintenance tier - Tier 2; an approach to long-term procurements of Tier 1 RECs administered by NYSERDA including procurement design and bid evaluation criteria; demonstration of compliance by Load Serving Entities (LSEs) for both the Renewable Energy Standard (RES) and the Zero-Emission Credit (ZEC) requirements; and other reporting requirements by NYSERDA provided by the automated New York Generation Attribute Tracking System (NYGATS). The Final Phase 1 Implementation Plan, incorporating the changes required by the February 22 Order, was filed on March 24, 2017.

3. Recommends program design and procedures for the 2018 sale of Tier 1 Renewable Energy Credits (RECs) procured by NYSERDA under long-term contracts, and provides guidance for:
   a. Sale frequency and timing;
   b. Sale pricing and inventory management process;
   c. Eligible REC purchasers; and
   d. Sale methods.
4. Recommends a method to calculate the alternative compliance payment (ACP) for 2018 and recommends utilizing ACP funds received by NYSERDA to fund the financial backstop mechanism which ensures payments to REC and ZEC generators.[3]
5. Proposes additional details regarding NYSERDA's long term REC procurement design.

Annual Tier 1 Targets

The CES Framework Order directed Staff to review and either confirm or propose modifications to the targets adopted for 2018 through 2021 in an implementation plan.[4] The annual LSE target obligations in the CES Framework Order included renewable energy anticipated to be supplied by both large scale projects and those anticipated to be installed behind the customer's meter (behind-the-meter or BTM). In the Phase 2 Proposal, revisions to the 2018-2021 targets were proposed to account for subsequent Commission clarification regarding the mandated targets, which are separate from activity in the voluntary market or from non-Tier 1 BTM facilities.[5] Additionally, the Phase 2 Proposal adjusted the annual LSE target obligations to account for delays in the available Tier 1 RECs from projects contracted under the now expired Renewable Portfolio Standard (RPS) Main Tier Solicitations conducted

[3] See 15-E-0302, supra, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles (issued November 16, 2016).
[4] CES Framework Order at p. 91.
[5] Phase 2 Proposal at pp. 2-6.

through 2016, but have yet to enter commercial operation as of January 1, 2015, the date authorized for Tier 1 eligibility.

The Phase 2 Proposal provided a comparison of the adjusted annual LSE target obligations with those from the CES Framework Order. The changes to the LSE obligations do not affect the procurement targets established by the Commission in the CES Framework Order or the overall 50 by 30 goal. The Phase 2 Proposal notes that changes in the annual LSE obligations are more significant in the early years of the RES program when solar PV projects installed through the NY-Sun program and not eligible for Tier 1 comprise the majority of the renewable attribute supply.

Comparison of Annual LSE Tier 1 Obligation - CES Framework Order to application of the Commission's November 2016 Clarification Order reflected in the Phase 2 Proposal

Year	CES Framework Order	Nov 17, 2016 Clarification Order	Phase 2 Proposal
2017	0.6%	0.035%	- - -
2018	1.1%	- - -	0.15%
2019	2.0%	- - -	0.78%
2020	3.4%	- - -	2.84%
2021	4.8%	- - -	4.20%

Divergence Test

The CES Framework Order required the development of a divergence test, designed to identify and correct any significant imbalances between the supply and demand for Tier 1 RECs.[6] The Phase 2 Proposal recommends a divergence test designed to avoid the need for large purchases of ACPs over an extended period due to shortages of RECs relative to the

[6] The CES Framework Order stated that although such an interim review is an important safeguard, the triennial targets will be presumed reasonable and interim revisions will be undertaken only in unusual circumstances.

established LSE obligations or undue erosion of the Tier 1 REC price by an extended REC surplus.

The proposed process consists of three steps: (i) evaluating whether current conditions represent an imbalance; (ii) a forward-looking evaluation to assess whether a course-correction is needed, and (iii) establishing the course-correction action.

To evaluate the REC market conditions, the Phase 2 Proposal recommends analyzing the percentage of the LSE obligation that is met through purchase of ACPs each year to determine if a shortage situation exists and analyzing the number of RECs banked by NYSERDA to determine an oversupply situation. If either a shortage situation or oversupply situation exists, DPS Staff and NYSERDA would coordinate to develop recommendations for the Commission to consider and act upon after an appropriate public comments period. The Phase 2 Proposal recommends defining shortage and over-supply as the following:

> Shortage Situation - LSEs meet their RES obligation with ACPs in excess of 10% of the total MWh Tier 1 RES obligation in the first year and at least 20% of the total MWh Tier 1 RES obligation in the second year.
>
> Over-supply Situation – the number of NYSERDA banked RECs is in excess of 10% of the total MWh Tier 1 RES obligation in the first year and 20% or more of the total MWh Tier 1 RES obligation in the second year.

Tier 1 REC Sales

For the 2018 program year, the Phase 2 Proposal suggests a revised method for pricing and selling Tier 1 RECs procured by NYSERDA. The proposal recognizes that market participants may prefer a static, long-term design for REC disposition but notes that market and policy factors which impact the RES program are rapidly evolving in New York State.[7]

The Phase 2 Proposal suggests incremental changes for the sale of Tier 1 RECs for the 2018 compliance period. Four quarterly sales events are proposed, during which NYSERDA will offer for sale the actual number of Tier 1 RECs in NYSERDA's NYGATS account at that time. Prior to each quarterly sale, NYSERDA will make available to LSEs relevant information regarding the total quantity and vintage of Tier 1 RECs available and the price; the most recently available annual load and the Tier 1 obligation percentage for each participating LSE; and other relevant information that will assist each LSE in understanding its status toward RES program compliance.

These proposed quarterly REC sales are designed to reduce the risk for both the LSE and NYSERDA by allowing LSEs greater awareness of the actual load served during the preceding quarter, which may encourage LSEs to purchase NYSERDA's RECs when offered, thereby improving NYSERDA's cash flow and reducing NYSERDA's working capital requirements. Any RECs remaining unsold at the end of each quarterly sale will be offered again in the subsequent quarter.

The Phase 2 Proposal recommends continuing the restriction that only LSEs may purchase Tier 1 RECs from NYSERDA

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[7] The Phase 2 Proposal acknowledges developments in the Value of Distributed Energy Resource Proceeding in Case 15-E-0751 (VDER Proceeding), and specifically the Order on Net-Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (VDER Order), which contemplates future Commission decisions that may affect rules governing transferability of Tier 1 RECs. Until the parameters for REC transferability are established in the VDER proceeding, it would be premature for the REC disposition design in this phase of CES implementation to include significant changes from the 2017 design.

for the 2018 compliance year. The RECs would not be transferrable, except as previously established by the Commission in the VDER Order.[8]

Alternative Compliance Payment

The Phase 2 Proposal recommends the same method for setting the ACP as was utilized in the 2017 compliance period: the projected weighted average cost per MWh that NYSERDA expects to pay for Tier 1 RECs offered in 2018, plus 10 percent. The ACP will be posted on NYSERDA's website and remain constant throughout 2018.

The Phase 2 Proposal recommends that ACP revenues collected by NYSERDA be used to reduce or defer the need for NYSERDA to invoke the provision included in the CES Framework Order and refined in a subsequent order issued November 2016 whereby electric distribution companies are required to provide a customer funded financial backstop mechanism to ensure payments will be made to REC and ZEC generators. The Phase 2 Proposal states that this approach will ensure that any ACP revenues are used to directly and equitably for the benefit of ratepayers.[9]

Banking of Tier 1 RECs

The Phase 2 Proposal recommends leaving the Tier 1 REC banking rules largely unchanged for 2018. However, based on the proposed changes for quarterly sales of RECs from NYSERDA, which should enable LSEs to better manage their REC purchases, there should be no need for LSEs to sell excess Tier 1 RECs back to

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[8] VDER Order, p. 61.

[9] Case 15-E-0302, supra, Clean Energy Standard, Order Approving Administrative Cost Recovery, Standardized Agreements and Backstop Principles, issued November 17, 2016 (Backstop Order).

NYSERDA as was authorized for 2017. Therefore, the Proposal recommends that the Commission discontinue the NYSERDA REC buyback process for 2018.

NYSERDA Tier 1 REC Procurements

The Phase 2 Proposal raises the issue of threshold eligibility requirements for bidding into NYSERDA's Tier 1 REC procurements relating to facility aggregation, co-location, return-to-service, and relocation. The Phase 2 Proposal did not propose any specific rules related to aggregation, co-location or return-to-service but invited parties to comment on modification that could be beneficial.

Contract Opt-Out

The Phase 1 Implementation Plan Order directed NYSERDA and Staff to consider a provision for allowing a renewable generating facility with a NYSERDA Tier 1 REC contract to suspend, or "opt out", of delivering RECs under that contract, and provide those RECs to a LSE to meet the LSEs RES obligation via the voluntary market. The Phase 2 Proposal includes a proposal for a modified right of suspension, subject to (i) a minimum duration substantial enough to assure that the suspension and voluntary REC transaction is enhancing renewable energy demand rather than arbitraging the NYSERDA contract price which could increase overall ratepayer costs; and (ii) requiring that such an option only be exercised upon NYSERDA's consent.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on June 7, 2017 [SAPA No. 15-E-0302SP28]. The time for submission of comments pursuant to the Notice expired on July 24, 2017. Those submitting comments included:

Alliance for Clean Energy New York, American Wind Energy Association, Advanced Energy Economy Institute, Northeast Clean Energy Council, and Solar Energy Industries Association (together, the Renewable Energy Parties or REP); Environmental Advocates of New York, Natural Resources Defense Council, Pace Energy and Climate Center, and the Sierra Club,(collectively, the Clean Energy Advocates or CEA); 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 (collectively, the Joint Utilities or JU); 3 Degrees; City of New York; Center for Resource Solutions (CRS); Geronimo Energy; Multiple Intervenors (MI); and the Independent Powers Producers of New York (IPPNY). [10] Comments received are summarized by topic below.

DISCUSSION AND CONCLUSION

Tier 1 Targets

Comments

The Clean Energy Advocates (CEA) and the Renewable Energy Parties (REP) propose that the near-term 2018-2021 targets be evenly distributed rather than continuing with a back-loaded approach. CEA noted, among other things, that placing greater emphasis on near term targets and achievements allows developers to leverage the benefits of available federal tax credits. Further, CEA and REP emphasized that the Phase 2

[10] IPPNY filed reply comments on August 18, 2017 to directly respond to comments filed by the Joint Utilities and requested that the Commission exercise its discretion to accept its response in the interests of having as complete and accurate record. Consideration of these unauthorized reply comments are noted but are not prejudicial to any party in this matter.

Proposal lacks LSE targets through 2030, which according to them was required by the Commission's CES Framework Order. CEA and REP argue that a long-term trajectory is needed to provide certainty and stability in the market and allow for the necessary groundwork to plan development of resources that will be needed to achieve the 50 by 30 goal. CEA and REP also request that NYSERDA's Tier 1 REC procurement targets be established on a five-year-rolling basis and that fixed dates for each annual and supplemental solicitation be published well in advance and that NYSERDA strictly adhere to the schedule.

The CEA also recommended further regulatory action to either achieve or better address the input assumptions related to energy efficiency and the existing baseline used for calculating the mandated targets. It recommends setting complementary, binding and enforceable energy efficiency targets; tracking baseline resources and upward adjustments of mandated targets to account for baseline attrition; and more accurate assumptions to account for the increases in loads from electric heat pumps and electric vehicles.

The City of New York offers no comments on the revised targets but recommends higher procurement targets for the utilities in the event the Commission decides to allow for utility-owned generation. The Joint Utilities state that the mandated LSE targets should consider the behind-the-meter generation and exclude generation that is consumed directly by the customer, as addressed in the VDER proceeding. It requests that the Commission confirm the treatment of energy demand satisfied by BTM generation. Such clarity, it notes, will be useful for LSEs in tracking both their obligated load and compliance obligations.

Discussion

The adjustments to the 2018-2021 targets and the near-term trajectory proposed by Staff and NYSERDA are reasonable and consistent with Commission decisions made subsequent to the CES Framework Order, as discussed in the Phase 2 Proposal, and are therefore adopted. The comment by CEA to evenly distribute the 2018-2021 targets, in lieu of "back-loading" in 2020 and 2021 fails to address an important point articulated in the Phase 2 proposal; which is that the trajectory is based on the expected three year development and construction cycle between the receipt of a NYSERDA award for Tier 1 RECs and a facility's ability to start producing RECs upon commercial operation. In other words, the targets reflect realistic expectations regarding availability of Tier 1 RECs as the RES program ramps up.

It is anticipated that increasingly larger obligations for the year 2022 through 2030 will be adopted with sufficient lead time for LSE's to incorporate changes into their planning process. Providing a mandated trajectory out through 2030 at this time would undoubtedly require adjustments in the later years to account for changes in statewide electric load, and other factors, noted by the CEA, that affect the inputs in the calculation of the mandated targets. Therefore, the trajectory through 2021 for the revised LSE targets provided in the Phase 2 proposal is deemed sufficient to provide enough certainty for planning purposes for LSEs, renewable developers and other market participants. NYSERDA and Staff, however, are required to continue to ensure a rolling trajectory of no less than 3-years for the LSE mandated percentage targets and the NYSERDA Tier 1 REC procurement targets, in future implementation plans.

In response to comments by the CEA and REP requesting a solicitation schedule "well in advance", the process by which

NYSERDA announces each annual solicitation remains unchanged from directives provided in the CES Framework Order. NYSERDA will, therefore, continue to hold no less than one solicitation during the first half of each calendar year and post the date on its website no later than December 1 of the preceding year.

The Joint Utilities correctly note that in the development and calculation of the annual LSE mandate, the impacts of behind-the-meter generation were factored and the load was adjusted.[11] While adjustments for BTM generation were made for the purpose of including their contribution when reporting the total statewide percentage of renewable generation, BTM generation consumed on-site has no adverse impact in setting the mandated targets. An LSE's Tier 1 REC obligation is calculated as a percentage of its retail load, whether that load is supplied by transactions with the New York Independent System Operator's (NYISO) or load-modifier facilities, including facilities receiving Tier 1 RECs under VDER. To the extent that BTM energy is consumed by a customer on-site at the time it is generated and consequently reduces the LSE's total load, it will have the effect of reducing that LSE's Tier 1 REC obligation. Neither the Phase 2 Proposal, nor this Order addresses utility ownership of renewable generation.

Lastly, CEA's recommendations to create additional regulatory policies around some of the input assumptions used to

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[11] Staff, in its calculation of the "Total Statewide Energy Need Excluding EE" numbers, included on Table 1 of the Phase 2 Proposal, adjusted the annual forecasts provided in the New York Independent System Operator's (NYISO) 2015 Load and Capacity Data Report (Goldbook) by adding the output of behind-the-meter facilities, as reported by the RPS and NY Sun Annual Performance Reports for the year ended December 31, 2016. Simultaneously, Staff increased the "Baseline Renewable" generation to account for behind-the-meter renewable generation.

calculate the LSE mandated targets are outside the scope of the Phase 2 Proposal but are, nonetheless, important factors that will, at a minimum, be considered as part of the triennial review. With respect to tracking attrition of baseline resources, NYSERDA is directed to post on its website, as part of its annual CES Compliance Reporting,[12] the methodology for calculating the statewide fuel mix for New York State. This methodology will provide transparency in accounting for the historic renewable baseline, the mandated targets, the voluntary market and other activities for measuring progress towards the 50 by 30 goal.

Voluntary Markets

Comments

3Degrees and the Center of Resource Solutions (CRS) express concern that future LSE mandated targets may be adjusted based on the results of the voluntary market. 3Degrees recommends that the State more clearly define the relationship between voluntary activity and existing and future LSE obligations. The Renewable Energy Parties recommend that consideration be given to allow LSE's to purchase additional RECs to help stimulate the voluntary market.

Discussion

The opportunities for voluntary markets to support achievement of the statewide 50 by 30 renewable energy goal are important and are discussed extensively in the CES Framework Order.[13] The VDER Order also clarified that all renewable generation consumed by customers in New York State will

[12] CES Compliance Reporting is described in the CES Final Phase 1 Implementation Plan at p. 34.

[13] CES Framework Order pp. 86-89

contribute towards the statewide goal, which by design relies on both mandatory and voluntary contributions.[14] Furthermore, the VDER Order confirms that actions taken in the voluntary market are not being used to satisfy LSE's obligations nor are voluntary actions being double counted in other instances.

CRS and 3Degrees express concern that LSE mandated obligations will be adjusted to correspond with activity in the voluntary market and that this action is antithetical to the tenets of additionality. While voluntary market activity is encouraged and will be tracked, it will not alter existing LSE obligations.[15] The Tier 1 mandated LSE obligations set by this order for 2018-2022 will not be adjusted due to activity in the voluntary market. The Commission appreciates the concerns expressed about the potential inability to meet certification protocols with RECs obtained through voluntary purchases and has explored this topic extensively. As previously discussed in the CES Framework Order, the 50 by 30 goal will be achieved through a combination of mandatory and voluntary actions. The CES Framework Order recognized that that the triennial reviews provide an appropriate forum to consider adjustment to mandatory targets and that such changes should be made prospectively with sufficient time so as not to erode the value of prior voluntary purchases.

[14] VDER Order pp. 62-63

[15] As noted by the CEA, progress on energy efficiency, penetration of electric vehicles and ground-source heat pumps, and attrition of baseline resources may affect the trajectory of future LSE mandated targets. Also, the CES Framework Order at p. 103, 118-119 discusses other factors to be considered in the triennial review process that could also factor into the mandated target trajectory.

Divergence Test

Comments

The JU support the proposed divergence test and notes that it is a prudent mechanism to address a short-fall of available Tier 1 RECs in the early years of the program if necessary. It further comments that if adjustments must wait until the triennial review, the delays may make it more difficult to reach the 50 by 30 goal.

Discussion

The divergence test described in the Phase 2 Proposal is adopted. However, as discussed in the CES Framework Order, the targets set in this order, are presumed to be reasonable and interim revisions, prior to the triennial review, will be undertaken only in extreme and unusual circumstances. Compliance flexibility measures including the ACP should serve to mitigate most short-term divergence issues.[16]

NYSERDA 2018 Tier 1 REC Sales

Comments

The JU support the recommendation to move toward quarterly REC sales and the establishment of an annual weighted average price for RECs that would remain constant during each quarterly sale in a given year. However, the JU contend that it is important that NYSERDA monitor and manage any difference between the price paid to purchase Tier 1 RECs and the price offered for sale in order to minimize shortfalls in cash flow that may trigger the need for use of the financial backstop mechanism.[17] The JU recommend that during the quarterly sales, if the demand for RECs exceeds supply, NYSERDA should allocate

[16] CES Framework Order at page 118

[17] The financial backstop mechanism allows NYSERDA to recover costs of unsold RECs from the distribution utilities, subject to cost recovery from electric ratepayers.

RECs to prospective buyers in proportion to the purchase requests it receives. Further, if supply exceeds demand, the JU recommend that unsold RECs remaining in NYSERDA's account be offered at the next quarterly sale. Additionally, the JU recommend consideration of a supplemental sale of RECs at the close of the compliance period for entities that need RECs to fulfill their obligations.

The JU recommends that LSEs be permitted to trade Tier 1 RECs from NYSERDA with other LSEs. They comment that LSE should be expressly allowed to sell excess RECs from banking, self-generation, or from projects owned by customers that provide RECs to the interconnected utility though arrangements specified in the VDER proceeding. The JU note that, in the near-term, the price for all REC transactions could be fixed at the NYSERDA weighted average price established for each compliance year.

Discussion

The process and design for quarterly sales of Tier 1 RECs for 2018, as detailed in the Phase 2 proposal, is adopted. Providing for quarterly sales allows LSEs and NYSERDA more operational flexibility in meeting program requirements. Also, the recommendation by the JU that NYSERDA sell available RECs based on the proportion of the purchase requests received from LSEs is reasonable to the extent that there is surplus RECs in excess of the quantities established for the right-of-first refusal for each LSE. The design and process for quarterly sales, described in the Phase 2 proposal, is intended to provide all LSEs with an equal opportunity to purchase RECs in proportion to their share of statewide customer load, which is fair and equitable. Further, there is no compelling reason for NYSERDA to hold another sale after the compliance period, as suggested by the JU. The final annual quarterly sales process for the 2018 compliance period is scheduled to occur from December 31, 2018 through January 31, 2019 following the end of the annual compliance period, which should be sufficient time for each LSE to purchase the balances of Tier 1 RECs that may be needed to meet its 2018 compliance obligation.

Finally, the Phase 2 Proposal recommendation to continue the limitations placed on the sale and transferability of NYSERDA procured Tier 1 RECS for the 2018 compliance period is prudent and adopted. As discussed in the Phase 2 Proposal, a near-term change in REC sales and trading under the Renewable Energy Standard program would be out of alignment with the VDER Order and the expected evolution of REC trading rules in future years. Therefore, as in the 2017 compliance period, Tier 1 RECs purchased by LSEs from NYSERDA for the 2018 compliance period will not be transferrable, except as established in the VDER Order.[18] The implementation of the quarterly REC sale process will limit the potential exposure of an LSE over or under procuring RECs from NYSERDA, thus eliminating the need of trading NYSERDA purchased RECs among LSEs, as recommended by the Joint Utilities.

Alternative Compliance Payment

Comments

The CEA recommends setting the ACP beyond 2018. The CEA also recommends increasing the ACP price to reduce uncertainty for market developers and to discourage LSEs using ACPs to comply with their obligations. The CEA contends that the ACP should be set high enough to provide an incentive for LSEs to commit to purchasing Tier 1 RECs at the beginning of each calendar year which will both stimulate new renewable development and provide for cost controls.

[18] VDER Order, p.61.

The City of New York, MI, the CEA and the REP urge the Commission to oppose the use of ACP funds for a financial backstop mechanism to ensure payments are made to REC and ZEC generators. They contend that funds should be used to directly reduce the costs of compliance for LSEs, expand opportunities for renewable resource development and lessen the CES burdens imposed on ratepayers. MI and the City of New York further note that there are ample unspent funds held by NYSERDA, such as those in the Clean Energy Fund, that are available for use as a backstop mechanism and that revenues from the ACP should not be held in a "reserve" indefinitely, but rather, should be returned directly to ratepayers. The CEA urge the Commission to use the ACP funds only for payments to renewable generators under the RES Program and not nuclear generators under the Zero Emission Credit (ZEC) program since the two programs were approved to operate separately.

The JU support establishing the ACP price at 10 percent above the Tier 1 REC market price. The JU also support the recommendation that ACP funds be used to reduce the cost of the RES program and to avoid the collection of any financial backstop payments which would otherwise increase costs to customers.

Discussion

As noted in the Phase 2 Proposal, the RES program is in its very early stages, as are other Commission policy initiatives, and the Commission is not in the position to approve certain concepts needed to develop a long term pricing method and trajectory for the ACP. Establishing a method for the 2018 ACP will provide the marketplace with sufficient certainty while providing the ability to consider evolving RES design and market conditions in establishing a long-term approach to setting the ACP. Therefore, the approach for setting the 2018 ACP set forth in the Phase 2 Proposal is adopted. For the 2018 compliance period, the ACP will be calculated based on NYSERDA's projected weighted average cost per MWh for the Tier 1 RECs expected to be offered in 2018 (the 2018 Tier 1 REC sale price), plus any Commission-approved administrative adder, plus 10 percent.[19] Per the CES Framework Order, as noted in the Phase 2 Proposal, by December 1, 2017, NYSERDA is required to file its Tier 1 REC price for 2018 and also the ACP for 2018 with the Commission and post both on its website.[20] The ACP will remain constant throughout 2018 and be paid directly to NYSERDA.

As proposed, the ACPs collected will be used to offset the cost of achieving the RES goals, which are distinct and separate from the ZEC program goals. While the CES Framework Order and Backstop Order discussed the need to provide a financial backstop for both the RES and ZEC programs, ACPs will be used, when necessary, to mitigate only the financial backstop relating to the RES program. In considering the stated objectives of both the CES Framework Order and the Backstop Order, it is most prudent to allocate the ACP funds toward offsetting the cost of achieving the RES goals, including mitigating any impact to customers related to the financial backstop. However, MI's concern about accumulating funds to offset an expense which may not occur, or may not occur at the magnitude of accumulated ACPs is valid. Therefore, the

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[19] On November 1, 2017, NYSERDA filed a petition in this proceeding (November Petition) seeking authorization to use existing cash balances to cover the costs of administering the RES program for the 2018 compliance year, in lieu of an additional administrative adder on the Tier 1 REC price.

[20] While NYSERDA will post both anticipated prices by December 1, 2017, minor adjustments to those prices may be required pending the Commission's decisions on NYSERDA's November Petition.

Commission directs NYSERDA to report, on an annual basis, RES program revenues (including but not limited to net proceeds from the sale of RECs, ACP payments received, interest earnings) and program expenses, and any surplus or shortfall for the year, and on a cumulative basis. If any cumulative surplus is more than 25% of NYSERDA's contractual Tier 1 REC payment obligation to generators for the current year, as part of its annual filing, NYSERDA shall propose a use for the excess portion (i.e., amount above 25%) that is in the ratepayers' interest. For example, NYSERDA may propose to use these surplus funds to reduce the REC price for subsequent quarterly REC sales.

NYSERDA 2018 Procurement Design

Comments

The City of New York and the REP recommend the Commission authorize the aggregation of discrete but like renewable facilities, into a single bid, in response to NYSERDA's Tier 1 solicitations. The REP continues to advocate for the aggregation of eligible renewable facilities that are non-contiguous and of approximately the same vintage and same technology. The City of New York states that smaller facilities face greater economic challenges than larger facilities and that some locations may not be able to host larger facilities, potentially losing an opportunity for expansion of renewable resources without the ability to aggregated resources.

The City of New York and REP also support allowing co-located facilities, such as adding storage to solar arrays or wind turbines, to bid as a single facility under NYSERDA's Tier 1 REC solicitations. The City notes that the use of complementary co-located technologies can better utilize these renewable resources to increase their system reliability and resiliency and removes barriers to their efficient deployment.

The REP support certain opportunities for repowered or refurbished facilities but recommend different qualification thresholds for return-to-service and repowered facilities based on technology. The REP expressed support for the original proposal for repowered facilities as stated in Staff's Phase 1 Implementation Proposal.

Discussion

Allowing aggregated and co-located facilities to bid as single facility for Tier 1 solicitations appears to be a prudent addition to the rules governing future solicitations. As the City of New York suggests, complementary technologies can increase system reliability and resiliency and assist in the deployment of renewable resources. Likewise, the aggregation of discrete but like facilities, into a single Tier 1 bid may also assist in the deployment of new renewable facilities. However, as noted in the Phase 2 Plan, accommodating such bids will require updates and changes to systems and processes already in place (e.g. bid evaluation criteria for Tier 1 procurements) and add further complexities to the solicitation process. Therefore, NYSERDA, in consultation with Staff, shall further analyze the criteria necessary for including aggregated and co-located facilities into a single Tier 1 bid and propose any new or changes to existing rules in an implementation proposal that would allow consideration of their application for a NYSERDA Tier 1 solicitation in 2019.[21]

[21] The lack of detail provided in the Phase 2 Proposal and the failure of comments to provide specific details on how to best accommodate aggregated and co-located facilities into a single bid, does not provide the Commission with sufficient information to justify these changes for the 2018 solicitation.

In a recent report on proposed changes to the eligibility requirements for the CES Tier 2,[22] Staff did not include a recommendation that the Commission modify the CES program to include a repowering option to allow the entire generation output of the facility be eligible for Tier 1. The report invited comments on this, and other issues raised in the report. Comments will be accepted until January 8, 2018. The Commission will issue a decision on the repowering issue in a subsequent order in this proceeding.

Contract Opt-Out Provisions

Comments

The JU and MI support limits on the ability of contract suspension. MI notes that renewable generators willing entered into the customer-subsidized contract and that the opt-out election seems inequitable to the other LSEs. MI recommends that any opt-out provision should only be permitted if there are demonstrable and tangible costs savings to ratepayers.

The REP support the provisions for opting out of a NYSERDA Tier 1 REC contract, as proposed in order to enhance the voluntary market.

Discussion

As proposed, NYSERDA is authorized to include, for the 2018 REC solicitations, a seller’s contractual right of suspension, subject to (i) a substantial minimum duration sufficient to assure that voluntary activity is enhancing renewable energy demand rather than arbitraging the NYSERDA contract to the detriment of ratepayers; and (ii) requiring that

[22] Staff Report Regarding Retention of Existing Baseline Resources under Tier 2 of the Renewable Energy Standard Program, issued October 19, 2017 (Tier 2 Report).

such an option be exercised only upon NYSERDA's consent after consultation with Staff. Further, NYSERDA shall secure the necessary documentation from the seller to demonstrate that any suspension of the contract is in the public interest and the interest of ratepayers.

Additional Comments

The City of New York requests that the Commission ensure that utilities process renewable project interconnection request equitably because it is concerned that a potential exists for utilities to prioritize projects included in their own Tier 1 compliance portfolio. It recommends continuous oversight and periodic audits of utility practices and if necessary corrective action to ensure fair and equitable treatment of all projects in the utility's interconnection queue.

Geronimo Energy suggests that the REC-only procurement structure may fail to create the long term stability needed to spur development necessary to meet to the 50 by 30 goal and supports implementation of a bundled energy and REC procurement for the RES program.

The JU continue to support utility-owned large-scale renewable generation as part of a portfolio approach. In response, the Independent Powers Producers of New York (IPPNY) objects to utility-owned generation. Further, IPPNY argues that the City of New York's comments regarding higher LSE obligations on utilities, will "tilt the playing field" heavily in favor of utility ownership, leading to more cost overruns and higher cost to customers. IPPNY recommends when the Commission examine any REC shortfalls as part of the annual divergence test, utility ownership should not be considered without a thorough review of the REC solicitation to determine why competitive entities did not respond.

Finally, the CEA request a determination on the issue of incremental large-scale hydro, and its role in contributing to the 50 by 30 goal.

Discussion

The comments, which are outside the scope of the Phase 2 Proposal under consideration here, have either largely been addressed in this proceeding, or are speculative.[23] With respect to the City's concern regarding fair practices by the utilities in interconnecting facilities to the electric grid, the New York Standard Interconnection Requirements (SIR), which apply to all applications to connect generation up to 5 MW in size to the distribution system, operate on a first come, first served basis. The utilities are required to process applications within specific time limits, based on their submission dates.[24] The SIR rules have been developed through open and transparent processes and continue to evolve to address matters of fair and equitable queue management, among other issues. Staff and the individual utilities make available to the public data about the status of projects in the queue. Staff is poised to address specific fairness or equity issues regarding the SIR process and interconnection progress that may arise and are brought to its attention by developers and other market participants and to resolve those issues in a timely manner.

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[23] For instance, the CES Framework Order discussed and determined issues regarding utility-owned generation and REC-only procurements. (pp. 99-103). Issues regarding hydroelectric eligibility and its role in contributing to the 50 by 30 goal were discussed in the Rehearing Order (pp. 16-17), Order on Phase 1 Implementation (pp. 17-19) and are included in Staff's Tier 2 Report for public comment.

[24] Case 16-E-0560, New York Standardized Interconnection Requirements, Order Adopting Interconnection Management Plan, Attachment C (January 25, 2017).

The Commission orders:

1. The Clean Energy Standard Phase 2 Implementation Plan Proposal (Plan) submitted by New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service (Staff) is approved in accordance with the discussion described in the body of this Order.

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

3. NYSERDA and Staff shall continue to ensure a rolling trajectory of no less than 3-years for the LSE mandated percentage targets and the NYSERDA Tier 1 REC procurement targets, in future implementation plans.

4. NYSERDA shall post on its website, as part of its annual CES Compliance Reporting, the methodology for calculating the statewide fuel mix for New York State that provides transparency in accounting for the historic renewable baseline, the mandated targets, the voluntary market and other activities for measuring progress towards the 50 by 30 goal.

5. NYSERDA shall report, on an annual basis, RES program revenues (including but not limited to net proceeds from the sale of RECs, ACP payments received, interest earnings) and program expenses, and any surplus or shortfall for the year, and on a cumulative basis. If any cumulative surplus is more than 25% of NYSERDA's contractual Tier 1 REC payment obligation to generators for the current year, as part of its annual filing, NYSERDA shall propose a use for the excess portion (i.e., amount above 25%) that is in the ratepayers' interest.

6. NYSERDA, in consultation with Staff, shall further analyze the criteria necessary for including aggregated and co-located facilities into a single Tier 1 bid in NYSERDA administered Tier 1 REC solicitations and propose any new, or

changes to existing, rules in an implementation proposal that would allow consideration of their application for a solicitation in 2019.

7. In the Secretary’s sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

8. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary