

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

REQUEST FOR CLARIFICATION OF
INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.

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Independent Power Producers of New York, Inc. (“IPPNY”) hereby submits this request for clarification of the New York State Public Service Commission’s (“Commission”) *Order Adopting Modifications to the Clean Energy Standard* (the “Order”) issued on October 15, 2020, in the above-captioned case.¹

I. THE COMMISSION SHOULD CLARIFY THAT THE HISTORICAL AVERAGE ENERGY PRODUCTION OF HYDROPOWER, COMMERCIALY OPERATING PRIOR TO THE DATE OF THE ORDER BUT ACQUIRED BY A SUPPLIER BIDDING IN A TIER 4 AUCTION AFTER THE DATE OF THE ORDER, MUST BE INCLUDED IN THE SUPPLIER’S ENERGY AND GREENHOUSE GAS (“GHG”) BASELINES.

In the Order, the Commission adopted, among other things, a new Tier 4 of the Clean Energy Standard (“CES”), independent of both Tier 1 and the Offshore Wind Standard, to increase the penetration of renewable energy in Zone J and reduce the reliance on fossil fuel-fired generation in that zone.² The Commission ruled that all “renewable energy systems,” as defined in Public Service Law § 66-p(1)(b), are eligible for Tier 4 with some exceptions. Specifically, the Commission ruled that existing, but not new, hydropower impoundments are eligible for Tier 4 so long as the associated energy “is shown to be additional to the supplier’s

¹ Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting Modifications to the Clean Energy Standard (Oct. 15, 2020) (“Order”).

² Order at 77.

baseline production of renewable energy.”³ Non-hydropower renewables must achieve commercial operation after the date of the Order to be eligible for Tier 4.⁴ The Commission ruled that:

the baseline should be calculated as an *historical average of hydropower generated by the supplier*. Renewable generation used to satisfy the baseline should be calculated as the sum of (1) hydropower generated by the supplier, less any generation from new impoundments not already under construction as of the date of this Order, and (2) non-hydropower generation that (a) meets the definition of “renewable energy systems” under the [Climate Leadership and Community Protection Act], (b) is not compensated elsewhere under the CES, and (c) meets the Tier 4 vintage requirement for non-hydropower resources.⁵

The Commission should clarify that the calculation of the baseline as the “historical average of hydropower generated by the supplier” does not literally mean that the supplier must have generated the hydropower historically for it to be included in the baseline. Ownership of the hydropower should not affect the calculation of the baseline. For example, if after the date of the Order, the supplier acquires a 30-year old hydropower project that was previously owned by a third party, the historical production of the project when it was owned by the third party should be included in the supplier’s historical baseline. Otherwise, a supplier could easily evade the baseline requirements by simply acquiring existing hydropower projects from third parties, thereby defeating the purpose of the additionality requirement.

³ Order at 18.

⁴ *Id.* at 85.

⁵ *Id.* at 90 (emphasis added).

II. THE COMMISSION SHOULD CLARIFY, OR RULE ON REHEARING, THAT THE MATERIAL ISSUES THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (“NYSERDA”) ADDRESSES FOR THE SUPPLIER ENERGY BASELINE AND THE GHG BASELINE MUST BE INCLUDED IN ANY AGREEMENT THAT NYSERDA NEGOTIATES WITH A SUPPLIER AND BE SUBJECT TO PUBLIC COMMENT AND COMMISSION REVIEW AND APPROVAL.

The Commission required Tier 4 applicants to provide NYSERDA with “the historic renewable energy delivered to the New York Control Area (not less than 20 years), historic generation baseline of average annual hydropower production (not less than 20 years) with the corresponding water flows as measured by U.S. Geological Survey (USGS) gauges or best available data sources, capacity additions, and other pertinent information that NYSERDA may request.”⁶ The Commission ruled that “[a]pplicants should be invited to propose their own baseline generation levels based on this data with an accompanying justification.”⁷ The Commission also granted Department of Public Service Staff (“Staff”) and NYSERDA discretion to establish the baselines for each supplier, “using the 20 years of data to determine baseline generation levels adjusted for both capacity additions and the broadest possible historical measure of water flows for each resource.”⁸ The Commission authorized NYSERDA and Staff “to address baseline issues prior to the submission of binding Tier 4 bids, as it may deem necessary.”⁹

The Commission required that NYSERDA and Staff file any agreement for the procurement of Tier 4 RECs with the Commission for public comment and approval “to ensure that Tier 4 REC prices are reasonable in relation to the value of the environmental attributes and

⁶ Order at 91.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

other benefits provided, including system and public health benefits.”¹⁰ As the GHG baseline is “central to the integrity of the Tier 4 concept and cannot be compromised,” the proper calculation of the baseline is critical to ensure existing Tier 4 hydropower resources truly reduce carbon emissions and are not simply backfilled by fossil resources.¹¹ To ensure transparency and informed review by the public and the Commission, the Commission should clarify that the agreements for the procurement of RECs that are filed with the Commission for public comment and review must describe in detail how the baseline is calculated, including descriptions of renewable resources and their associated historical production, and how the supplier is able to meet the additionality requirement, including descriptions of the facilities that are additional to the baseline.

Respectfully submitted,

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¹⁰ Order at 81–82.

¹¹ *Id.* at 89.