

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

Matter 17-01821 - In the Matter of Carbon Pricing in New York Wholesale Markets

COMMENTS OF INDEPENDENT
POWER PRODUCERS OF NEW YORK, INC.

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On March 13, 2019, the American Wind Energy Association (“AWEA”) and the Alliance for Clean Energy New York (“ACE NY”) jointly filed with the New York State Public Service Commission (“Commission”) in the same pleading a statement opposing the petition filed by Independent Power Producers of New York, Inc. (“IPPNY”) and Multiple Intervenors (“MI”) in the above-captioned proceedings on July 9, 2018¹ and a petition requesting that the Commission require that Renewable Energy Credit (“REC”) prices be indexed against New York Independent System Operator, Inc. (“NYISO”) wholesale market prices for future Tier 1 REC procurements.²

As discussed below, the Commission should reject AWEA/ACE NY’s statement opposing the July 9 petition. The Commission should grant AWEA/ACE NY’s request to modify the pricing of RECs in future REC solicitations but, instead of requiring that future Tier 1 REC procurements index REC prices to NYISO-administered wholesale market prices, the Commission should require that REC prices be indexed to the carbon dioxide (“carbon”)

¹ Cases 15-E-0302 et al., *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Petition of Multiple Intervenors and Independent Power Producers of New York, Inc. for Relief to Protect New York Consumers and the State’s Competitive Wholesale Electricity Markets from Potential Double Payments of the Same Attribute (July 9, 2018) (“July 9 Petition”).

² Cases 15-E-0302 et al., *supra*, Statement of American Wind Energy Association and Alliance for Clean Energy New York in Opposition to Petition of Multiple Intervenors and Independent Power Producers of New York, Inc. And Petition of American Wind Energy Association and Alliance for Clean Energy New York for an Order Modifying the Clean Energy Standard Tier 1 Procurement Process (Mar. 13, 2019) (“March 13 Pleading”).

emissions adder-related cost component of the wholesale market locational based marginal prices (“carbon price”) that may be adopted by the NYISO in the near future.

I. THE COMMISSION SHOULD REJECT AWEA/ACE NY’S STATEMENT IN OPPOSITION TO THE JULY 9 PETITION.

In their July 9 Petition, IPPNY and MI requested that the Commission act expeditiously to prospectively protect New York consumers and the State’s competitive wholesale electricity markets from potential double-payments related to retail and wholesale compensation for the same or similar non-emitting attribute in the event that the NYISO adopts a carbon price. As IPPNY and MI demonstrated in the July 9 Petition, this potential overpayment is not in the public interest as it will overcharge consumers, squander scarce dollars that could be better utilized to encourage more clean energy projects and will harm the competitive market. In their March 13 Pleading, AWEA/ACE NY argue that a carbon price would not provide a double payment to REC contract holders because the Commission’s Renewable Portfolio Standard (“RPS”) and Renewable Energy Standard (“RES”) programs serve multiple policy objectives of which carbon abatement is only one. They contend that a carbon price “does not compensate generators for these other values, is not being considered as a replacement for the RES, and does not justify undermining the commitments the State has made to renewable generators through the RPS and RES programs.”³

Many of AWEA/ACE NY’s arguments are misplaced, unfair and should be rejected. First, AWEA/ACE NY ignore the obvious fact that the price that a renewable generator bids in a REC auction and is paid for its RECs, if it wins an award, is set based on the revenue the generator requires to be economic beyond the revenue it expects to earn in the NYISO’s

³ March 13 Pleading at 2.

wholesale markets. AWEA/ACE NY do not contend, nor can they, that if the NYISO implemented a carbon price, renewable generators would reflect an estimate of that price into their REC bids, which would very likely drive down the cost of RECs. If generators were allowed to retain the full cost of RECs without accounting for a carbon price, consumers would be required to pay more than the generator needed to be economic.

Second, AWEA/ACE NY's true concern is not with the July 9 Petition, but with the NYISO's proposal to claw back revenues from renewable generators that hold *existing* REC contracts, which is perplexing considering that AWEA/ACE NY raise this issue eight months after the July 9 Petition was filed and three months after the NYISO withdrew its claw back proposal. The July 9 Petition did not advocate for a claw back of the revenues of existing REC contracts, and AWEA/ACE NY even acknowledged that the NYISO withdrew its claw back proposal on December 3, 2018.⁴ AWEA/ACE NY have not pointed to a single market participant that has continued to advocate for a claw back of revenues from existing REC contracts, nor is IPPNY aware of any market participant who has done so. Moreover, AWEA/ACE NY acknowledged that IPPNY and MI requested that the Commission act to avoid a potential double payment on a *prospective basis*. AWEA/ACE NY have not demonstrated any harm that could occur to renewable generators if their bids in REC auctions reflected a potential carbon price adjustment on a prospective basis.

Third, AWEA/ACE NY oppose the July 9 Petition but implicitly support IPPNY's and MI's request by proposing to index RECs to wholesale market prices. They state that doing so "will defuse the dispute at the heart of the IPPNY/MI petition" because, "when the carbon price

⁴ March 13 Pleading at 4. IPPNY takes no position with respect to AWEA/ACE NY's arguments opposing the claw back mechanism for existing REC contracts.

causes wholesale energy prices to rise, the value of the REC would go down, on average, by a commensurate amount.”⁵ However, as discussed further below, AWEA/ACE NY’s Index REC proposal goes well beyond what is necessary to protect consumers against the potential double payment if a carbon price is implemented and instead proposes that the Commission require that future REC contract holders receive fully hedged payments protecting them from all market risk. The Commission has correctly rejected this in the past because it transfers market risk from suppliers to consumers and it should reject it again here. Thus, the Commission should reject AWEA/ACE NY’s statement in opposition to the July 9 Petition.

II. THE COMMISSION SHOULD GRANT AWEA/ACE NY’S REQUEST TO ADOPT AN INDEXED REC APPROACH BUT SHOULD REQUIRE THAT RECS BE INDEXED TO THE CARBON PRICE, NOT THE WHOLESALE MARKET PRICE.

AWEA/ACE NY request that the Commission require that, for future Tier 1 procurements, REC prices be netted against a composite index of NYISO wholesale market prices (the “Index REC”) in the manner the Commission recently authorized for offshore wind renewable energy credits (“ORECs”).⁶ AWEA/ACE NY argue that “now is the right time to take this step” and that “[i]ndexing REC prices to market prices would be a good idea even if no carbon price were on the table.”⁷

The Commission should reject AWEA/ ACE NY’s request for an Index REC because it is an unreasonable and unnecessary departure from the Commission’s long-standing policy to utilize the structure that has successfully been in place for more than a decade—RECs purchased on a fixed-price basis. AWEA/ACE NY have not demonstrated that “now is the time” for a

⁵ March 13 Pleading at 10.

⁶ Case 18-E-0071, *In the Matter of Offshore Wind Energy*, Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement (July 12, 2018) (“Offshore Wind Order”).

⁷ March 13 Pleading at 10.

market-based Index REC. Indeed, the evidence demonstrates that the fixed-price REC approach has been highly successful. The weighted average award price in the New York State Energy Research and Development Authority's ("NYSERDA") most recent REC auction was \$18.77 per REC, which is the lowest award price since 2010 under the RPS.

As IPPNY has demonstrated in prior comments, the Index REC approach shifts market risk from developers to consumers when developers are in the best position to manage such risk. Index REC's are contrary to the Commission's long-standing policy that private investors and their shareholders should bear the risks of generation ownership, not captive retail consumers. While the Commission adopted an Index OREC approach for off-shore wind, AWEA/ACE NY ignore that the Commission did so due to the "unique characteristics of offshore wind."⁸ The Commission determined that "offshore wind procurement needs to begin immediately in order to cost effectively secure the economic and environmental benefits."⁹ The Commission pointed to the need to balance "the financial risk involved in developing offshore wind in its early stages" with the concern that all market risk will be shifted to consumers.¹⁰ To balance these concerns "in a way that ensures immediate progress," the Commission adopted a hybrid procurement approach that requires a fixed OREC bid and an adjustable OREC bid using the Index OREC procurement approach.¹¹ The Commission required that "the bidder must be prepared to commit to either a fixed price or an adjustable price regime if accepted, as determined by NYSERDA."¹² Further, the Commission ruled

⁸ Offshore Wind Order at 38.

⁹ *Id.* at 39.

¹⁰ *Id.* at 38.

¹¹ *Id.* at 39.

¹² *Id.*

that, “if NYSERDA awards a contract using the Index OREC method, the contract will specify conditions that may trigger a reversion to the Fixed OREC method and price that was bid.”¹³

Thus, the Commission’s adoption of an Index OREC approach for offshore wind was based on the unique circumstances attending offshore wind in its early stages, was highly qualified, and cannot be used as a precedent for applying the Index REC approach to future on-shore wind and solar projects when existing projects have been successfully, financed, built and operated for many years in New York with the support of fixed-price REC contracts.

While IPPNY opposes AWEA/ACE NY’s Index REC approach, IPPNY agrees with AWEA/ACE NY that an index approach will avoid any potential double payment if the NYISO implements a carbon price. Rather than index REC prices to market prices, however, the Commission should require that, for future REC solicitations, RECs be indexed to a carbon price adjustment if a carbon price is implemented by the NYISO. As with fixed-price RECs, REC contract holders would be subject to wholesale market risk, rather than shifting such risk to consumers.

If the State decides to pursue the economically efficient decision of placing the carbon emission reduction value directly into the wholesale energy market prices, consumers would be protected from the potential of paying twice for the same attribute. It would also avoid any harm to REC contract holders because, in aggregate, the increase in energy payments as a result of a carbon price would assure them of receiving the REC price that they bid into the auction and were awarded. Consumers would be protected from paying twice for the same attribute because as the carbon price increased for a renewable generator, its REC payments would be reduced. Further, as developers would know ahead of time that their REC payments could be reduced if the NYISO implements a carbon price, they could ensure that any hedging arrangements they make reflect this potential outcome. The State’s plans for pursuing renewable generation additions are sufficiently robust that

¹³ *Id.* at 40.

clear hedging arrangements can be developed if the adjustment mechanisms are defined ahead of time.

IPPNY notes that the NYISO stated in its comments in the offshore wind case that an approach indexing ORECs to a carbon price is “an efficient alternative structure” to fixed-price ORECs.¹⁴ The NYISO stated that “[c]arbon indexed ORECs would incentivize offshore wind generators to select locations of the highest value and to operate in response to market prices. This incentive structure minimizes the risks shifted to consumers and away from offshore wind developers.”¹⁵

V. CONCLUSION.

For the foregoing reasons, the Commission should reject AWEA/ACE NY’s statement in opposition to the July 9 Petition and grant AWEA/ACE NY’s proposal to avoid double payments to REC contract holders on a prospective basis but modify the proposal to require that RECs be indexed to the carbon price.

Respectfully submitted,

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¹⁴ Case 18-E-0071, *supra*, NYISO Comments (June 4, 2018), at 7.

¹⁵ *Id.* at 8.