NEW YORK PUBLIC SERVICE COMMISSION APPROVES NEW CONTRACTING STRUCTURE FOR LARGE-SCALE PROJECT RENEWABLE ENERGY CREDITS

Hodgson Russ Renewable Energy Alert
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On January 16, 2020, the New York State Public Service Commission (the Commission) adopted a first-of-its-kind contracting mechanism for purchasing renewable energy credits (RECS) from on-shore, large-scale renewable (LSR) energy systems. [1] Multiple 2020 Orders can be expected adjusting the State's Renewable Energy Standard and Large-Scale Renewables (LSR) program to fit the State's 2019 Climate Leadership and Community Protection Act (CLCPA), which requires 70% of New Yorkers' electricity consumption to come from renewable sources by 2030. The Commission's "Order Modifying Tier 1 Renewable Procurements" directs the New York State Energy Research and Development Authority (NYSERDA) to offer a so-called "Index" option in addition to a "Fixed" REC price structure.

Furthermore, the Commission directed NYSERDA to accept Index REC bids from LSR developers in its next LSR program request for proposals (RFP), which will issue in 2020. Commission Chair John Rhodes stated that the Order "will benefit renewable energy developers by reducing their risks while also lowering customer costs." In fact, NYSERDA projected that the new mechanism could save New York State ratepayers $4.6 billion as the state reaches for the CLCPA's 70% renewable electricity goal.

The Commission's Order has been well-received by industry groups. Anne Reynolds, Executive Director of the Alliance for Clean Energy New York (ACE NY) – whose petition filed together with the American Wind Energy Association (AWEA) kicked off the proceeding leading up to this Order – called this "an exciting new contracting option for renewable energy. New York's renewable energy industry welcomes this new contracting option, in the belief that it will attract new projects, investment, and competition to New York."

The Index REC

First designed and proposed to the Commission by NYSERDA in early 2018 as an option for offshore wind REC (OREC) contracting, an Index REC structure was included in the Commission's July 2018 Order authorizing the State's first tranche of

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2,400 megawatts (MWs) of offshore wind procurement. The principle behind the Index REC structure in the offshore wind context was to provide developers with a better hedge against the uncertainties of wholesale power markets – reducing the need for them to purchase hedging products on the market – to enable those developers to bid lower REC prices. This value was at a premium in the offshore wind context, in particular, where upfront development capital costs are high.

The reference price in the OREC index was formulated as an average of the prior month's energy and capacity prices cleared in the New York Independent Service Operator's (NYISO) Zones J and K, which cover Long Island and New York City. That formula was successfully employed in NYSERDA's 2018 offshore wind contracting process, which resulted in a robust set of 22 separate proposals by five individual bidders and executed contracts using the index structure at all-in prices comparable to the power purchase contracts executed by offshore wind developers in neighboring northeast states.

Starting in 2020, on-shore solar and wind energy developers bidding into NYSERDA's LSR RFPs will be able to propose an Index REC price structure. In the 2017 and 2018 solicitations, NYSERDA awarded 45 LSR projects – the vast majority of which were solar – for a total of more than 2700 MWs of capacity. The results of the 2019 solicitation are expected to be announced very soon and are likely to approximate if not exceed the prior years' totals. The 2020 RFP will likely issue this spring and per this Order, will be the first to solicit Index REC.

While the LSR Index REC has its roots in the offshore wind program, and the two contracting structures have much in common – including that neither *requires* the generator to participate in the wholesale markets – they are also distinct in important ways both in design and implementation. In the offshore wind program, developers may bid both Fixed REC and Index REC prices and NYSERDA is required to assess the comparative values. In the LSR program, developers will have to choose whether to submit a Fixed REC or Indexed REC bid – they cannot submit both.

Furthermore, while the settlement period in the LSR program will be the same as in the offshore wind program – that is, monthly – the components of the reference price index will be calculated differently. In the LSR program, the energy reference price will be a simple average of the NYISO's actual day-ahead prices in the NYISO zone where the generator is located, which is meant to reduce administrative complexity and ensure a level playing field among technologies (in particular wind and solar). And for the capacity component of the reference price, the developer will be able to choose an Unforced Capacity (UCAP) factor that will apply through the life of the contract. Exhibit B of the Order describes the Reference Price formula. The Commission required NYSERDA and the Department of Public Service to file an Implementation Plan within 90 days (though it could be filed sooner). That plan will not need to be approved by the Commission and will further describe the methodologies for calculation of prices, NYSERDA's evaluation processes and other details.

Potential Distributed Energy Resource Implications

This change to the LSR contracting mechanism will likely have effects outside of that program as LSR project developer bidding behaviors and REC prices change. For example, as the Advanced Energy Economy Institute (AEE) noted in its comments in the proceeding, changes to the LSR procurement methodologies may impact the environmental value (E Value) that is used in New York as a component in the Value of Distributed Energy Resources (VDER) tariff to compensate distributed resources, such as community solar. This is because the E Value is determined by the NYSERDA LSR REC prices. The Commission recognized this potential in its Order, and suggested that the matter be taken up in the VDER

proceeding's Value Stack Working Group. LSR and wholesale market changes may indeed impact DER project economics in various ways as the markets evolve. We noted in our December 2019 alert (ACE-NY's report on the NYISO's carbon pricing proposal) that to the extent a carbon price increases those wholesale market energy prices, VDER's energy value will likewise increase.

To learn more about the Commission's Index REC Order, please contact a member of Hodgson Russ's Renewable Energy Practice at https://www.hodgsonruss.com/practices-renewable-energy.html.

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[1] RECs are commodities that represent the renewable attributes of a unit of generated electricity, which can be traded and sold for market value. In New York State, Tier 1 RECs are produced by defined renewable energy resources upon the production of one megawatt-hour of generation, as tracked by the New York Independent Service Operator (NYISO) and accounted for by the New York State Generation Attribute Tracking System (NYGATS). Within the NYGATS platform, Tier 1 RECs are purchased by NYSERDA at the price bid into NYSERDA's LSR RFPs, and then sold by NYSERDA to the state's load-serving entities pursuant to contracts those entities have with NYSERDA and in accordance with those entities' compliance obligations under the Commission's Clean Energy Standard Order.