

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on December 13, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Gregg C. Sayre  
Diane X. Burman, concurring, in part and dissenting, in part  
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 3 IMPLEMENTATION PLAN

(Issued and Effective December 14, 2018)

BY THE COMMISSION:

INTRODUCTION

On August 1, 2016, the Public Service Commission (Commission) adopted a Clean Energy Standard (CES) comprised of a Renewable Energy Standard (RES) and a Zero-Emissions Credit (ZEC) requirement.<sup>1</sup> The CES Framework Order also adopted a goal, as part of a strategy to achieve a 40% reduction in statewide greenhouse gas emissions, whereby 50% of electricity consumed in New York by 2030 would be generated by renewable energy sources (referred to as the "50 by 30" goal). To carry out the various elements of the CES, the Commission enumerated several details for it to resolve during an implementation phase.<sup>2</sup>

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<sup>1</sup> Case 15-E-0302, et al., Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

<sup>2</sup> CES Framework Order, Appendix F.

In February 2017, the Commission approved a Phase 1 Implementation Plan, which addressed certain elements, including the necessary CES program requirements to participate in Tier 1 Renewable Energy Credit (REC) procurements in 2017, and for demonstrating compliance with the CES mandate for the 2017 period.<sup>3</sup> The Phase 1 Plan Order also directed Department of Public Service Staff (Staff) and the New York State Energy Research and Development Authority (NYSERDA) to propose a subsequent plan that addressed post-2017 Load Serving Entity (LSE) RES targets, as well as Alternative Compliance Payments (ACP) levels and the disposition of any ACP funds collected. In November 2017, the Commission approved a Phase 2 Implementation Plan, which addressed those and related matters, while other issues were directed to be included in a further implementation proposal.<sup>4</sup>

On July 30, 2018, Staff and NYSERDA submitted a CES Phase 3 Implementation Plan Proposal (Phase 3 Proposal or Filing) that addresses further implementation issues for the 2019 CES program year and beyond. In this Order, the Commission approves, with modifications, a Phase 3 Implementation Plan, and requires submission of a final plan.

#### THE FILING

The Phase 3 Proposal would continue the process of executing a plan in furtherance of the CES goals and requirements. Specifically, the Filing proposes to:

1. Clarify how LSE load is calculated for purposes of establishing its CES obligations;

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<sup>3</sup> Case 15-E-0302, Order Approving Phase 1 Implementation Plan (issued February 22, 2017) (Phase 1 Plan Order).

<sup>4</sup> Case 15-E-0302 Order Approving Phase 2 Implementation Plan (issued November 17, 2017) (Phase 2 Plan Order).

2. Amend the RES Tier 1 certification processes for eligible Value of Distributed Energy Resources (VDER);
3. Extend the commercial operation milestone date under RES Tier 1 procurements;
4. Implement program design and procedures for the sale in 2019 and beyond of Tier 1 RECs procured by NYSERDA under long-term contracts including:
  - a. Sale frequency and timing;
  - b. Sale pricing and inventory management process;
  - c. Eligible REC purchasers and transferability;
  - d. Sale methods; and
  - e. Consideration for potential future modifications to any of the above;
5. Continue the current methods to calculate the ACP;
6. Adopt Tier 1 banking rules that apply to LSEs and NYSERDA for 2019, and provide considerations for potential future modifications; and,
7. Outline and clarify the State reporting requirement under CES, including the content and timing of the Triennial Review process, and provide a schedule of ongoing filings.

#### Tier 1 RES LSE Obligation and Targets

The Phase 2 Plan Order directed NYSERDA and Staff to develop and include a rolling trajectory of no less than three years for the LSE mandated percentage targets and NYSERDA Tier 1 REC procurement targets.<sup>5</sup> In response, NYSERDA and Staff's Filing proposes that the 2022 targets and LSE obligation would be filed during the third quarter of 2019, along with the results of the most recent divergence test that is used to assess the balance between mandated demand and the anticipated supply of Tier 1 RECs.

#### Certification of Eligible Tier 1 Resources

The Filing proposes a certification process to efficiently manage the certification of the anticipated volume

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<sup>5</sup> Phase 2 Plan Order, p. 25.

of Tier 1 REC-creating VDER projects, while maintaining the legitimacy of the certification process. NYSERDA and Staff propose to use the information reported to the Standardized Interconnection Requirements (SIR) Inventory in making determinations of Tier 1 eligibility for VDER projects submitted by interconnecting LSEs. NYSERDA and Staff also propose that a determination of eligibility for VDER resources would not require the issuance of a Statement of Qualification by NYSERDA. VDER projects would only be deemed eligible once the project is listed as complete and accepted into operation in the publicly available interconnection SIR inventory information section.

RES Tier 1 Procurement Design Features

The Phase 1 Implementation Plan approved by the Commission set a Commercial Operation Milestone Date (COMD) for awarded facilities that is approximately two years from the anticipated selection date, which then may be extended for another two years. Based on RES Tier 1 procurement experience, Staff and NYSERDA observed that bidders may face procedural delays outside of their control, such as permitting or interconnection to the New York Independent System Operator, Inc. (NYISO). To mitigate the bidder's risk, the Filing proposes to allow for two additional six-month extensions periods that will result in an allowable COMD that is approximately five years from the anticipated selection date.

NYSERDA Tier 1 REC Sale Frequency and Timing

The Filing proposes to continue to offer in 2019, and beyond, quarterly Tier 1 REC sales to LSEs using the approach approved in the Phase 2 Plan Order. NYSERDA and Staff propose to modify the length of the sale period, such that the sales period will conclude 21 days following the Tier 1 REC Sale Offer Announcement, according to the schedule below in Table 1. The

Filing proposes to follow the same methodology for announcing and concluding sales in subsequent years.

*Table 1. Proposed 2019 REC Resale Process Schedule*

Trading Period	Tier 1 REC Sale Offer Announcement	Tier 1 REC Sale Process Conclusion
Q1	Between March 31, 2019 and April 10, 2019	Announcement + 21 calendar days
Q2	Between June 30, 2019 and July 10, 2019	Announcement + 21 calendar days
Q3	Between September 30, 2019 and October 10, 2019	Announcement + 21 calendar days
Q4	Between December 30, 2019 and January 10, 2020	Announcement + 21 calendar days

Sale Pricing and Inventory Process

The Filing proposes to continue the sale frequency and process, as well as the inventory process employed in 2018, until otherwise modified in future implementation plans. Further, the Phase 3 Proposal would continue the pricing methodology for Tier 1 RECs for the current and prior compliance year vintage, while proposing a modification to older vintage RECs. Since NYSERDA may bank unsold RECs for 2 years, the Phase 3 Proposal would reduce the sale price for banked Tier 1 RECs that are scheduled to expire after the end of the current compliance year.<sup>6</sup> The Phase 3 Plan proposes to provide the flexibility to price such expiring Tier 1 RECs in order to clear the inventory of the expiring Tier 1 RECs, subject to prevailing market conditions.

Alternative Compliance Payments (ACP) Level

The Phase 3 Proposal recommends that the method of setting the ACP level continue to use the process approved in

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<sup>6</sup> For example, any remaining 2017 vintage Tier 1 RECs may be sold at a reduced price during the 2019 compliance period.

the Phase 2 Implementation Plan, consistent with the approach to NYSERDA REC sale timing and frequency. For the 2019 ACP, and until otherwise modified in a future implementation plan, the ACP will be calculated based on the projected weighted average cost per MWh that NYSERDA anticipates paying to acquire the Tier 1 RECs expected to be offered in 2019, plus any Commission-approved administrative adder, plus 10 percent. The Filing proposes that the ACP would remain constant throughout the compliance year and be paid directly to NYSERDA.

#### Tier 1 REC Banking

The Phase 3 Proposal recommends that Tier 1 REC banking rules remain unchanged for 2019 and beyond which authorize NYSERDA and LSEs to bank Tier 1 RECs for two subsequent compliance periods.<sup>7</sup> On July 16, 2018, the Commission issued an Order that granted the members of the Joint Utilities unlimited banking of Tier 1 RECs from VDER projects for the compliance years 2018-2022, and therefore not subject to the 60% banking rule limit for these VDER projects.<sup>8</sup> The Phase 3 Proposal states that the 60% banking limitation on non-VDER Tier 1 RECS would remain in place for 2019, but that it may be revised for future compliance years.

#### CES Reporting Requirements and Schedule of Filings

The Phase 3 Proposal recommends modifications to three of the CES required reports. The Phase 3 Plan does not propose changes to the RES Program Impact and Evaluation Report. The CES Financial Status Report is an annual report that describes program revenues and expenditures for the prior compliance year,

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<sup>7</sup> For example, the 2018 VDER RECs will expire in the 2020 compliance year.

<sup>8</sup> Case 15-E-0302, et al., Order Providing Limited Modifications to Certificate Banking Restrictions (issued July 16, 2018) (July 2018 Order).

including the ACP payments collected and cumulative program surplus or shortfall. As required by the Phase 2 Implementation Plan, NYSERDA must propose a way to use any excess funds for ratepayers' interest in the event there is a surplus that is more than 25% of NYSERDA's contractual Tier 1 REC payment obligation to generators for the current year. The Phase 3 Proposal recommends that the RES Procurement Performance Report be modified to include the status of all the active Renewable Portfolio Standard (RPS) contracts and Tier 2 maintenance contracts. The Filing proposes to merge the historical annual RPS report with the Tier 1 Procurement Report into a single annual report going forward. Further, it proposes to rename the CES Compliance Report to the CES Progress Report, which would now summarize and analyze progress towards the Commission's renewable energy goals. The CES Progress Report will discuss the aggregate LSE compliance with RES and ZEC obligations over the compliance period and the results of other means to achieve the 50 by 30 goal, including accounting for baseline renewables and voluntary market activity (e.g., utility and Energy Service Company (ESCO) green offerings).

#### Annual Divergence Test and Target Setting

The Phase 3 Proposal states that the first divergence test would be conducted for 2017 and 2018 data in September 2019, after all load data for both years is finalized and after the LSEs have finalized their New York Generating Attribute Tracking System (NYGATS) compliance reports for the previous year. The divergence test would be conducted annually on the same schedule thereafter. The outcome of the divergence test would also inform setting of the rolling 3-year trajectory of the RES Tier 1 obligations and future procurement targets.

Triennial Review

As directed by the CES Framework Order, starting in 2020, and every three years thereafter, the Commission will review the CES program. The triennial review will focus on the RES program, but will not include a review of the ZEC program, which has a set purchase obligation. The Phase 3 Proposal states that the triennial review will include the results of the most recent divergence tests conducted since the last triennial review and an assessment of the trends presented by those results. The Phase 3 Proposal notes that the triennial review will also assess the effectiveness of the procurement structure, legacy supply retention, ACP levels, banking rules and other considerations.

NYSERDA and Staff propose that the first review begin immediately after the data is available for the 2016 to 2018 compliance period. NYSERDA expects the compliance data to be available soon after May 2019, followed by a 12-month review to take place (June 2019 to May 2020), with a June 2020 target date for filing the triennial review with the Commission. Therefore, the Commission could potentially take action that would be effective for the 2021 compliance year.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on August 22, 2018 [SAPA No. 15-E-0302SP37]. The time for submission of comments pursuant to the Notice expired on October 22, 2018. Comments were received

from the City of New York (NYC), Joint Utilities (JUs or utilities), and Multiple Intervenors (MI).<sup>9</sup> The comments are addressed below.

LEGAL AUTHORITY

The Commission's authority derives primarily from the New York State Public Service Law (PSL), through which numerous legislative powers are delegated to the Commission. Pursuant to PSL §5(1), the jurisdiction, supervision, powers and duties of the Commission extend to the manufacture, conveying, transportation, sale or distribution of electricity. PSL §5(2) requires the Commission to encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.

In addition, PSL §66(2) provides that the Commission shall examine or investigate the methods employed by persons, corporations and municipalities in manufacturing, distributing and supplying electricity and have power to order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas or electricity. PSL §4(1) also expressly provides the Commission with all powers necessary or proper to enable [the

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<sup>9</sup> The JUs include Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (Orange & Rockland or O&R), Central Hudson Gas & Electric Corporation (Central Hudson or CHGE), Niagara Mohawk Corporation d/b/a National Grid (National Grid), New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E).

Commission] to carry out the purposes of the PSL including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates,<sup>10</sup> environmental stewardship, and the conservation of resources.<sup>11</sup> In addition to the PSL, the New York State Energy Law §6-104(5)(b) requires that “[a]ny energy-related action or decision of a state agency, board, commission or authority shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan, including its most recent update.”

#### DISCUSSION AND CONCLUSION

##### Certification of Eligible Tier 1 Resources

In its comments, NYC raises concerns with the Phase 3 Proposal to use the SIR inventory to determine Tier 1 eligibility. NYC argues that the SIR inventory is still being developed and believes that all the DER projects that qualify for Tier 1 may not be included in the inventory. NYC suggests that, at a minimum, developers should be able to contact NYSERDA directly to seek Tier 1 eligibility. Additionally, NYC supports an appeals process for developers whose projects are not included in the SIR inventory.

The Commission notes that in the Phase 3 Proposal, the use of the SIR inventory would only be used to validate information included in the NYGATS registration processes for

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<sup>10</sup> See *International R. Co. v Public Service Com.*, 264 AD 506, 510 (1942).

<sup>11</sup> PSL §5(2); see also, *Consolidated Edison Co. v Public Service Commission*, 47 NY2d 94 (1979) (overturned on other grounds) (describing the broad delegation of authority to the Commission and the Legislature’s unqualified recognition of the importance of environmental stewardship and resource conservation in amending the PSL to include §5).

Tier 1 VDER projects that have elected to receive the E-Value in the value stack; parties with ownership rights to the RECs generated by Tier 1 VDER projects will still be required to register each project in NYGATS. The use of the SIR Inventory to validate information would not take effect until Staff and NYSERDA are satisfied that the entire process is fair, consistent and meets the same requirements as is currently in place under NYSERDA validation process for Tier 1 VDER projects. In addition to DPS Staff and NYSERDA, the process would include discussions with interconnecting LSEs, project developers, the NYISO and other parties to ensure that the resulting process is efficient, accurate and not a burden upon VDER Tier 1 project participants.

Regarding NYC's concerns, the Commission finds that it is unlikely that projects would be omitted from the SIR Inventory. The SIR Inventory process is designed to provide multiple opportunities for a project developer to correct misinformation in the inventory. Once a developer submits an interconnection application to a utility, that application is automatically included in the utility's tracking database. Once a month, each of the New York utilities submits information on the applications in the queues to Staff pursuant to the requirements of the SIR. Staff then publishes the non-confidential portions of the utilities' filings in the SIR Inventory, which is available on the DPS website.<sup>12</sup> The information published includes the project name, location, nameplate capacity, fuel type, and other characteristics. Thus, even if there is no communication between the utility and the

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<sup>12</sup> The inventory can be found on the Department of Public Service (DPS) website:  
<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/286D2C179E9A5A8385257FBF003F1F7E?OpenDocument>

developer after submission of an application, a developer will know within a few weeks whether the application has been included in the SIR Inventory. If the project is reported on the DPS website, the developer will know whether the utility has correctly recorded the project's details.

This monthly reporting continues through the interconnection process, as the utilities update the status of the projects in their queues. Each month, a project developer has an opportunity to determine whether the information the utility reports to DPS about its project is accurate or incomplete. In addition, there is extensive direct communication between the developer and the utility throughout the interconnection process, as the utility analyzes the developer's proposal and determines how it will interact with the utility's distribution system. Finally, any developer who has concerns about the accuracy of the information reported by the utility or the utility's failure to list an application can raise the issue with Staff, as is provided in the SIR. While misunderstandings and miscommunications between developers and utilities can and do occur, by the time an application has passed into the construction stage, the project information available in the SIR Inventory is unlikely to be incorrect.

Therefore, the Commission approves the recommendations contained in the Phase 3 Proposal regarding the use of the SIR inventory to validate VDER projects accepting the E-value of the value stack as eligible for Tier 1 RECs. Projects that elect to retain the RECs produced by their project must register their project with NYGATS in order to receive the associated RECs.<sup>13</sup>

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<sup>13</sup> These RECs are non-tradeable and non-transferable.

RES Tier 1 REC Disposition

The JUs request that the Commission consider expanding the ability of LSEs to trade RECs with other LSEs to create additional liquidity in the REC market and manage variability of REC output at renewable facilities when their Tier 1-minted RECs volumes exceed their REC obligations. JUs suggest that all RECs could be traded at the current NYSERDA price and the current ACP value would serve as the cap on overall REC prices.

The Commission has previously provided interconnecting electric distribution utilities that must acquire VDER RECs with an avenue to manage their risk related to variability of REC output at VDER facilities. In the July 2018 Order, the Commission authorized the utilities to bank unlimited VDER RECs each year from 2018-2022, thus allowing the utilities to use any excess VDER RECs they accumulate while the targets are low. The July 2018 Order noted that allowing transferability of VDER RECs would deprive ratepayers of the value of RECs distributed utilities are required to purchase on their behalf. Utility VDER RECs will be considered when CES Tier 1 obligations are set for 2022 and beyond. At that time, the Commission will have a better understanding of utility VDER RECs. Further, NYSERDA's implementation of REC quarterly sales should reduce the LSEs risks of over-procuring RECs, thus eliminating the need to trade RECs between LSEs to manage variability of renewable facilities output. It should be noted that LSEs may sell non-VDER, non-NYSERDA procured RECs as needed, without Commission authorization. Therefore, the Commission finds the JU's request unnecessary.

Sale Pricing and Inventory Process

According to MI, the Phase 3 Proposal is unclear as to whether the price reduction of the expiring RECs is a one-time occurrence to clear the 2017 vintage Tier 1 RECs or whether

NYSERDA expects to accumulate excess RECs each year. The JUs, MI, and NYC suggest there may be a mismatch between the annual REC obligation for LSEs and the number of RECs NYSERDA procures each year. NYC adds that NYSERDA has accumulated a significant backlog of vintage Tier 1 RECs and that this backlog suggests that there is a mismatch between the REC procurements and the LSE demand for RECs. NYC suggests that the Phase 3 Proposal does not address this mismatch. MI recommends that NYSERDA find a solution to scale back its quarterly REC solicitations so that it is only procuring the necessary number of RECs for LSEs.<sup>14</sup>

In addition, MI and NYC express concern that the Phase 3 Proposal is silent on the methodology to be used by NYSERDA to calculate the reduced price of the expiring RECs. MI recommends that the methodology be published for public comment. NYC adds that the Phase 3 Proposal does not contain a clear justification for reducing the price for expiring RECs, or address how the proposal is in the ratepayers' best interest. NYC suggests that either the annual percentage of load that must be served from renewable resources is too low or NYSERDA is over-procuring RECs and ratepayers are potentially bearing the costs. NYC recommends that NYSERDA evaluate why LSEs are not buying all the procured RECs and take steps to bring the supply and demand back into balance. NYC is also concerned that the differential between the original vintage REC price and the reduced REC price would be paid by ratepayers through the Financial Backstop Mechanism. NYC recommends that the Commission set guidelines governing the process in which prices for RECs are reset.

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<sup>14</sup> NYSERDA conducts annual solicitations for the procurement of Tier 1 eligible RECs. NYSERDA conducts quarterly REC sales to provide LSEs with an opportunity to purchase RECs from NYSERDA.

The Commission notes that the RES is a nascent program. The RES is nearing the completion of its second program year, and currently, NYGATS can only provide complete program information for 2017, the first year of the RES program. The Commission cautions stakeholders not to presume the results of the first program year are an indication of the long-term health of the RES program in general.

As illustrated in Table 2 below, with relatively low numbers of procured RECs and a low LSE REC obligation, variations in the actual number of RECs purchased by NYSERDA from Tier 1 eligible facilities or the number of RECs purchased by LSEs from NYSERDA may appear as significant variances in terms of percentages, but only represent a relatively small number of RECs. Further, the existence of unsold, or surplus, 2017 vintage RECs at NYSERDA, does not indicate a mismatch exists between procured RECs and the LSE obligations. As described in the CES Framework Order, LSEs may satisfy their RES REC obligation by purchasing Tier 1 eligible RECs from NYSERDA or from a third-party supplier, by self-supplying RECs, or through the purchase of ACPs. The method used by each LSE to satisfy its RES obligation could have a direct impact on the level of RECs sold and the level of RECs that NYSERDA holds as surplus at the end of the program year. In fact, for the 2017 program year, approximately half of the LSE obligation was met using either ACPs or third-party supplied RECs and not RECs purchased from NYSERDA.

Several factors may have contributed to the use of ACPs in the 2017 program year, including an earlier program rule that required LSEs to commit to the number of RECs they would

procure from NYSERDA at the beginning of the 2017 program year.<sup>15</sup> Additionally, many LSEs chose to meet their RES obligation at the end of the compliance period using ACPs because of its administrative ease. Further, it appears that the level of third-party supplied RECs was only an issue in the 2017 program year due to the relatively low LSE obligation percentage. In order to determine if this may be a concern in future years, the Commission directs Staff and NYSERDA to review the impact of the use of ACPs and third-party supplied RECs as compliance tools as part of the divergence test.

Because of the low LSE obligation,<sup>16</sup> the use of ACPs and third-party supplied RECs did have an impact on the supply of RECs that remained unsold at NYSERDA at the end of 2017. However, with a higher LSE obligation in 2018, NYSERDA has indicated that, through its first three quarterly REC sales held for 2018, LSE demand has outpaced NYSERDA's ability to supply of Tier 1 eligible RECs. As a result, it appears unlikely that there will be surplus 2018 vintage RECs at the end of this current compliance year.

*Table 2. 2017 NYSERDA REC Activity*

Actual 2017 Jurisdictional Load (MWh)	153,162,587
2017 LSE Obligation Percentage	0.035%
LSE Obligation (# of RECs/ACPs)	53,601
Actual Tier 1 RECs Purchased by NYSERDA in 2017	41,891
Number of 2017 Tier 1 RECs Purchased from NYSERDA	27,803
Unsold 2017 Tier 1 RECs	14,808

<sup>15</sup> This program rule was subsequently eliminated by the Commission's adoption of the quarterly REC sales model that was approved in the Phase 2 Plan Order.

<sup>16</sup> The 2017 LSE obligation percentage was 0.035% of wholesale load; the 2018 LSE obligation increased to 0.15% of wholesale load.

At this time, it would be premature to recommend that NYSERDA scale back on its annual REC procurement solicitations. As discussed in the Phase 3 Proposal, developers will have up to five years from the anticipated selection date of a facility to the commercial operation date of that facility. This construction cycle will provide ample opportunity for the anticipated RECs procured in an annual solicitation to be reflected as part of the rolling three-year LSE obligation targets. To reduce the solicitation in these early years could result in extremely aggressive and potentially unachievable targets in later solicitations. Therefore, the Commission directs NYSERDA to maintain its current procurement schedule.

MI and NYC are correct in their observations that the Phase 3 Proposal did not clearly identify how the vintage REC price adjustment would be calculated. To help clarify this issue, the Commission notes that an adjustment to the vintage year REC price will only be made for a period where the vintage price exceeds the subsequent year's ACP price.<sup>17</sup> For example, the 2017 Tier 1 REC sale price was set at \$21.16/MWh; the 2018 Tier 1 REC sale price was set at \$17.01/MWh and the resultant 2018 ACP price was \$18.71/MWh. At these prices, it would be uneconomic for an LSE to purchase a 2017 REC when that price exceeds the 2018 ACP price.

If NYSERDA is unable to adjust the vintage REC price, and the weighted price of the subsequent program years are below the vintage year REC price, any surplus RECs will remain unsold. As the commenting parties identified, those costs could be recoverable through the financial backstop mechanism. However, allowing NYSERDA to adjust the vintage REC price would prove to be in the ratepayers' interest. If NYSERDA is able to reduce

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<sup>17</sup> RECs may be used to satisfy an LSE's obligation up to two years following the year in which the REC was created.

the 2017 vintage REC price and sell those RECs during the subsequent compliance period, NYSERDA would be able to recover a majority of the vintage REC price. Additionally, the LSE that purchases the vintage REC would be able to meet its REC obligation using 2017 vintage RECs at a price lower than the then current ACP price, and reduce its cost of meeting the REC obligation.

Because of the sale at the reduced price, NYSERDA would only be required to invoke the backstop for a small portion of the vintage REC price. In fact, it may be possible to use other funds, such as ACP revenues, to avoid invoking the backstop all together. Therefore, the Commission adopts the Phase 3 Proposal to allow NYSERDA to adjust the vintage year REC price in years when the vintage REC price exceeds the current year ACP price. In those instances, the adjusted vintage REC price will be set equal to the current year's REC price. Such a pricing scheme would make LSEs indifferent to meeting the current year LSE obligation with current year or vintage year RECs.

The Commission confirms that the vintage REC price will not be adjusted for periods when the subsequent years' ACP prices exceed the vintage year REC price. In those instances, the lower price of the vintage year REC would make it an attractive alternative to the current, higher priced ACP.

NYSERDA's Offering of RECs to LSEs

The JUs recommend that the Commission consider ways to increase information available to LSEs regarding the number of RECs expected to be available for sale in any given compliance year or quarterly offering. The JUs state that the current process provides the information too late to the LSEs, thus making the procurement strategy challenging.

The Commission recognizes that the Phase 2 Implementation Plan changed the process by which LSEs purchase RECs from NYSERDA for the upcoming coming year. Instead of committing LSEs to buy anticipated RECs from NYSERDA for each compliance year at the beginning of each year, NYSERDA now offers actual available RECs in its NYGATS account through a quarterly sales offering. This new process benefits LSEs by allowing the LSEs to purchase RECs based on actual load, instead of an out of date historic load that may not reflect the LSEs current load. Further, the implementation of quarterly sales provides LSEs the actual number of RECs NYSERDA was able to secure. For example, in 2017, NYSERDA forecasted to have approximately 56,000 RECs available to sell to LSEs when NYSERDA was only able to secure approximately 42,000 RECs. Because of the intermittent nature of renewable resources in question, it would difficult to accurately determine the number of RECs NYSERDA may have in any given year. The current process affords LSEs with the flexibility to seek both long term contracts with other REC suppliers and allow LSEs to fine tune their annual procurement needs using the NYSERDA procurement process. The Commission therefore finds that there is no need for NYSERDA to publish the total anticipated REC offering for the upcoming compliance period.

Additionally, in its comments, the JUs request that the Commission consider ways to increase the visibility and knowledge of available Tier 1 RECs in any given compliance year. It refers to the issue of not receiving timely information regarding the availability of RECs and that this lack of visibility hinders the LSEs planning process. To partially address this issue, the Commission notes that NYSERDA has deployed a "Bulletin Board" feature as part of NYGATS. This Bulletin Board feature provides market participants with the

ability to post availability of Tier 1 (and voluntary RECs) for sale or purchase. According to the NYGATS Operating Rules, each Account Holder in NYGATS has a Bulletin Board Subaccount where it may post Certificates/RECs available for purchase and where Account Holders may post an interest in purchasing Certificates. The Bulletin Board can be viewed by all Account Holders from the list of public reports. Interested Account Holders can contact the seller or buyer directly using the contact information supplied with each post.<sup>18</sup> Therefore, LSEs can sell non-VDER, non-NYSERDA procured RECs should the LSEs find it has over-procured RECs.

#### ACPs

The JUs recommend that the Commission provide guidance to NYSERDA on how to best spend the ACP funds. JUs suggest that the funds could be used to reduce the cost of future RECs or to eliminate or reduce NYSERDA's administrative adder. Further, JUs states these funds could be put toward utility-offered energy efficiency programs. JUs believe the use of the ACP funds should be part of the triennial review. Additionally, JUs support the Phase 3 Proposal to continue the existing approach to calculating the ACP value.

In the Phase 2 Plan Order, the Commission directed that any ACP funds would be used to offset the cost of achieving the RES goals. The Commission suggested that the surplus could be used in a variety of ways to reduce RES program costs, including to reduce the REC price for subsequent quarterly sales or to mitigate any impact to customers related to the financial backstop. NYSERDA is required to report annually to the Commission, as part of the CES Financial Status Report, the program revenues and expenditures for the prior compliance year,

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<sup>18</sup> NYGATS operating rules can be found at [www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents](http://www.nyserda.ny.gov/All-Programs/Programs/NYGATS/Registration-Documents)

including ACP payments collected and cumulative surplus or shortfall. The Phase 2 Plan Order directed NYSERDA to propose a use for the surplus ACP funds should the surplus be more than 25% of NYSERDA's contractual Tier 1 REC payment obligation to generators for the current year. The Commission does not agree with the parties that further guidance is needed at this time.

#### Divergence Test

The JUs urge the Commission to conduct the 2018 compliance year divergence test and begin the triennial review as early as January 2019. JUs believe that there is no need to wait for the NYISO's reconciliation process because sufficient data exists today to assess the development of the CES since its launch in 2016.

The Phase 3 Proposal calls for the divergence test to begin in September 2019, after the data from the compliance years 2017 and 2018 is available for review. The Phase 2 Implementation Plan requires two years' worth of data to be collected to conduct the first divergence test. The final reconciliation of the LSE load data, however, is not available until five months following the compliance year closing.

The Commission does not support conducting a divergence test using unverified load data. It would be unwise to base test results and potential target adjustments on data that could materially change once the NYGATS reconciliation occurs. It is important to recognize that the RES program is still in its early phase, and it would be inappropriate to make changes too quickly without the necessary data to support changes. The Commission finds conducting the first divergence test in September 2019, when the data is most accurate and complete, is appropriate.

CES Reporting Requirements and Schedule of Filings

The Phase 3 Proposal proposed a schedule for CES administrative, programmatic, and compliance filings to be filed on either a quarterly and annual basis. One such filing is the CES Progress Report, which the Filing proposed would be filed on an annual basis by October 30<sup>th</sup> of each year, beginning in 2018. The CES Progress Report is intended to summarize and analyze progress towards the Commission's renewable energy goals.

Although no party submitted comments specifically addressing the timing of this report, the Commission finds that a slight modification as to the timing of this report is appropriate. Since the ZEC compliance period reconciliation does not occur until September 30 of each year, the Commission recognizes that submission of the annual CES Progress Report by October 30<sup>st</sup> may not provide adequate time to complete all transactions necessary to finalize the ZEC program compliance year. Extending the deadline to file the CES Progress Report from October 30<sup>th</sup> to December 31<sup>st</sup> of each year should provide NYSERDA with sufficient time to compile a more complete progress report. Therefore, the Commission modifies the Phase 3 Proposal's schedule of CES Reports to change the due date for the CES Progress Report to December 31<sup>st</sup> of each year.

The Commission orders:

1. The Clean Energy Standard Phase 3 Implementation Plan (Plan) submitted by New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service (Staff) is approved, as modified and in accordance with the discussion 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 discussed in the body of this Order.

3. In the Secretary's sole discretion, the deadline set forth in Ordering Clause No. 2 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.

4. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary