



CRS

center for  
resource  
solutions

[SUBMITTED BY EMAIL TO: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)]

September 30, 2016

Hon. Kathleen H. Burgess, Secretary  
State of New York Public Service Commission (PSC)  
Three Empire Plaza  
Albany, New York 12223-1350

**RE: CASE 15-E-0302. Comments of Center for Resource Solutions (CRS) in Response to Notice Soliciting Comments on Request for Clarification Issued September 12, 2016**

Hon. Kathleen Burgess:

CRS appreciates this opportunity to comment on the New York State Energy Research and Development Authority's (NYSERDA's) petition requesting clarification regarding the status of attributes associated with NY-Sun and other Customer-Sited Tier (CST) projects in light of the Clean Energy Standard (CES) Order's filing requirements requesting NYSERDA to publish the number of Renewable Energy Credits (RECs) that will be available for sale for the 2017 compliance period by December 1, 2016.

We understand that the Commission is considering whether to clarify that the new renewable resources from NY-Sun and other CST projects are to be counted towards the CES target without further action by the load serving entities (LSEs). While CRS will not comment on whether or not CST RECs should be counted toward the CES, we provide information about the implications of this decision for CST customers and make recommendations for communicating to CST customers.

**Background on CRS and Green-e®**

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS has broad expertise in renewable energy policy design and implementation, electricity product disclosures and consumer protection, and GHG reporting and accounting. CRS administers the Green-e programs. Green-e Energy is the leading certification program for voluntary renewable energy products in North America. In 2014, Green-e Energy certified retail sales of 38 million megawatt-hours (MWh), representing over 1% of the total U.S. electricity mix, or enough to power nearly a third of U.S. households for a month. In 2014, there were over 836,000 retail purchasers of Green-e certified renewable energy, including 50,000 businesses.

Stakeholder-driven standards supported by rigorous verification audits and semiannual reviews of marketing materials ensure robust customer disclosure and are pillars of Green-e Certification. Through these audits and reviews, CRS is able to provide independent third-party certification of RE products. Green-e program documents, including the standards, Code of Conduct, and the annual verification report, are available at [www.green-e.org](http://www.green-e.org). CRS also has a long history of working with state agencies to design and implement policies to avoid double counting, maintain the voluntary renewable energy market as surplus to regulation, and support positive market interactions.

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## Comments

### **1. CST generation should be tracked and issued RECs in the New York Generation Attribute Tracking System (NYGATS).**

Though environmental attributes are de facto created at the point of generation and owned by the generator, and can be contractually retained or transferred, and this can be verified contractually even where RECs are not formally issued and serialized in a tracking system, clear REC ownership in a tracking system is considered best practice in terms of tracking and verification of attribute ownership. Issuance of RECs in NYGATS for CST generation would provide much needed transparency and clarity with respect to attribute ownership for these projects and it would help avoid double counting and double claiming. Only the entity with the RECs in their tracking system account would have ownership and the right to claim renewable energy usage.

### **2. CST customers need to retain the RECs in order to claim voluntary use of renewable energy that is surplus to regulation, meet organizational sustainability goals related to renewable energy use, and to report reduced emissions associated with electricity consumption from CST facilities.**

The environmental attributes of renewable energy generation cannot be double counted. If RECs associated with CST generation are used by LSEs to meet CES obligations, this generation is effectively delivered to the collective group of LSE customers and the CST project owner or customer cannot also claim exclusive, voluntary use of those MWh of renewable energy.

CST customers must retain the RECs in order to claim voluntary use of renewable energy from their facilities and in order to report reduced emissions associated with the produced electricity (Scope 2 emissions reductions) as a result of their facilities. To the extent that these are important drivers of investments in renewable energy by CST customers under programs like NY-Sun, if the RECs are not retained by CST customers and instead transferred to the LSE and used to meet the state CES target, you may expect a decrease in these investments.

Should the Commission decide that CST RECs may be retained by CST customers in NYGATS, we recommend that the state provide additional clarification as to whether or not this CST generation/these RECs are counted toward a “voluntary portion” of the CES or RPS, which will help both CST customers and voluntary programs determine if the generation is indeed surplus to regulation. Counting the RECs within a “voluntary portion” of the CES could render the renewable energy not surplus to regulation, which may change the value proposition for some voluntary customers (i.e. they are simply helping LSEs comply with CES obligations). This would also mean means that customers may not be able to use this renewable energy towards external initiatives or partnerships that require regulatory surplus. For each MWh, it must be clear who owns the REC (e.g. a voluntary customer or NYSERDA/LSE on behalf of the collective consumers in the state) and whether it is used for compliance or consumption beyond compliance.

There are many existing resources that explain and substantiate the legal basis of RECs for voluntary renewable energy claims in the U.S., including the following:

- Jones *et. al.* (2015). *The Legal Basis of Renewable Energy Certificates*. Center for Resource Solutions. <http://resource-solutions.org/site/wp-content/uploads/2015/07/The-Legal-Basis-for->

[RECs.pdf](#)

- Sotos, M. (2015) *GHG Protocol Scope 2 Guidance: An Amendment to the GHG Protocol Corporate Standard*. World Resources Institute. Available online: [http://www.wri.org/sites/default/files/Scope\\_2\\_Guidance\\_Final.pdf](http://www.wri.org/sites/default/files/Scope_2_Guidance_Final.pdf)
- The White House, Council on Environmental Quality (CEQ). (2012) *Federal Greenhouse Gas Accounting and Reporting Guidance Rev. 1*. Available at: [http://www.whitehouse.gov/sites/default/files/microsites/ceq/revised\\_federal\\_greenhouse\\_gas\\_accounting\\_and\\_reporting\\_guidance\\_060412.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ceq/revised_federal_greenhouse_gas_accounting_and_reporting_guidance_060412.pdf)
- The White House, Council on Environmental Quality (CEQ). (2015). *Implementing Instructions for Executive Order 13693 Planning for Federal Sustainability in the Next Decade*. Available at: [https://www.whitehouse.gov/sites/default/files/docs/eo\\_13693\\_implementing\\_instructions\\_june\\_10\\_2015.pdf](https://www.whitehouse.gov/sites/default/files/docs/eo_13693_implementing_instructions_june_10_2015.pdf)
- U.S. Department of Energy, U.S. Environmental Protection Agency, the World Resources Institute, Center for Resource Solutions. (March 2010). *Guide to Purchasing Green Power Renewable Electricity, Renewable Energy Certificates, and On-Site Renewable Generation*. Office of Air (6202J) EPA430-K-04-015. DOE/EE-0307. Available at: [https://www.epa.gov/sites/production/files/2016-01/documents/purchasing\\_guide\\_for\\_web.pdf](https://www.epa.gov/sites/production/files/2016-01/documents/purchasing_guide_for_web.pdf)
- U.S. Federal Trade Commission (FTC). (2012). *Guides for the Use of Environmental Marketing Claims; Final Rule*. Available at: [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-use-environmental-marketing-claims-green-guides/greenguidesfrn.pdf)
- U.S. Federal Trade Commission (FTC). (2015). *Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehey, Furlong & Behm, P.C.* February 5, 2015. Available at: [https://www.ftc.gov/system/files/documents/public\\_statements/624571/150205gmpletter.pdf](https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf)

**3. CST customers should receive clear and accurate disclosure of REC ownership and implications for their claims when electing to use NY-Sun or other state programs.**

Regardless of whether RECs associated with CST generation are retained by CST customers or used by LSEs to meet CES obligations, CST customers should be provided with clear and accurate disclosure of REC ownership for their facilities. They should also receive accurate information about what this means for them in terms of their claim to renewable energy use and carbon footprint reduction claims, particularly in the case that they do not retain the RECs, in which case they cannot claim usage of renewable energy or a reduced carbon footprint from their facilities. They should receive this information early in the process of enrolling in or applying to NY-Sun and other CST programs, such that they can use it to inform their decision to use the program or not.

We understand that CST customers have not always received this information, or that upon seeking clarification of REC ownership related to voluntary claims they have received inaccurate information about their ability to make voluntary claims associated with their facilities without owning the RECs. This has led to a great deal of confusion and frustration among CST customers.

We can assist the state in developing appropriate and clear REC and claim disclosure for customers.

Please feel to contact us with any questions about these comments, or if we can otherwise be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd Jones', with a stylized flourish at the end.

Todd Jones  
Senior Manager, Policy and Climate Change Programs