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March 6, 2013

VIA ELECTRONIC FILING

Hon. Jeffrey C. Cohen
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12201-1350

Re: Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard

Dear Acting Secretary Cohen:

Multiple Intervenors hereby submits its *Reply Comments* pursuant to the *Notice Establishing Comment and Reply Schedule on the New York State Energy Research and Development Authority's Request for Modifications to the Renewable Portfolio Standard (RPS)* ("Notice") issued on January 4, 2013 in the above-referenced proceeding. For the reasons set forth below, Multiple Intervenors urges the New York State Public Service Commission ("Commission") to reject any and all proposals that would extend the term of contracts executed under the Main Tier of the State's Renewable Portfolio Standard ("RPS").

On February 19, 2013, numerous parties, including Multiple Intervenors, submitted *Initial Comments* on the *Petition for Modification of RPS Main Tier Program* ("Petition") filed by the New York State Energy Research and Development Authority ("NYSERDA") on December 14, 2012. Although the parties' Initial Comments generally were limited in scope to the single issue set forth in the Petition (*i.e.*, whether out-of-State renewable energy projects should be eligible to participate in the RPS Main Tier), certain commenters went far beyond this issue and recommended an additional, material modification to the RPS Main Tier. Specifically, Ridgeline Energy, LLC ("Ridgeline"),¹ Iberdrola Renewables, LLC ("Iberdrola"),² and the Alliance for Clean Energy New York, Inc. ("ACENY")³ each

¹ Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Comments of Ridgeline Energy on the Petition for Modification of Renewable Portfolio Standard Main Tier Program Eligibility ("Ridgeline Comments") (dated February 19, 2013) at 1.

² Case 03-E-0188, *supra*, Comments of Iberdrola Renewables, LLC ("Iberdrola Comments") (dated February 19, 2013) at 3.

³ Case 03-E-0188, *supra*, Comments of Alliance for Clean Energy New York, Inc. ("ACENY Comments") (dated February 19, 2013) at 7.

recommended that the Commission increase the term of contracts for facilities participating in the RPS Main Tier to a period longer than ten years. To this end, ACENY contended that “[c]urrent market conditions, including low natural gas prices, have made it increasingly difficult for RPS-eligible projects to obtain financing with *only* a 10-year incentive payment from NYSERDA.” (ACENY Comments at 7; emphasis added.) ACENY recommended that the Commission develop “innovative financial and revenue structures,” which structures apparently may include extending the ten-year term of RPS Main Tier contracts. Iberdrola recommended that the Commission consider extending the term of RPS Main Tier contracts from ten years to 15 years. (Iberdrola Comments at 3.) Ridgeline asserted without support that a longer contract term would lower the per unit cost of procuring renewable energy under the Main Tier. (Ridgeline Comments at 1.)

The Commission cannot now consider potential modifications to the term of contracts proffered to renewable energy project developers under the RPS Main Tier because it did not provide any notice that it may consider this issue. As required by the State Administrative Procedure Act (“SAPA”), the Commission published a *Notice of Proposed Rule Making* (“SAPA Notice”) in the *New York State Register* (I.D. No. PSC-01-13-000170-P) on January 2, 2013. The Commission stated in its SAPA Notice that the purpose of the proposed rule under consideration was whether “[t]o modify the rules of the Renewable Portfolio Standard eligibility requirement” as proposed by NYSERDA in its Petition. (SAPA Notice.) The Commission further explained that it would be considering “whether to adopt, modify, or reject, in whole or in part,” NYSERDA’s Petition. (*Id.*) The SAPA Notice is devoid of any reference to the term of RPS contracts, which issue also is not discussed in the Petition.

The Commission solicited public input on the Petition via the Notice issued herein on January 4, 2013. In that Notice, the Commission explained that it would be considering a NYSERDA request for a Commission order “revising the rules for the RPS Main Tier in order to limit eligibility to projects located in New York State, including any offshore projects directly interconnected to the New York grid.” (Notice at 1.) The Notice cross-referenced the SAPA Notice, but provided no further description of the proposed rule under consideration.

Neither the SAPA Notice nor the Notice provided any indication whatsoever that the Commission might consider modifications to the RPS other than the specific issue presented in NYSERDA’s Petition (*i.e.*, whether to exclude out-of-State projects from participation in the RPS Main Tier). Accordingly, given that the Commission did not provide any notice that it might consider modifications to the RPS that go beyond the scope of the single issue presented by the Petition, it cannot now consider the RPS contract modifications recommended by ACENY, Iberdrola, and Ridgeline. If the Commission were to direct NYSERDA to extend the term of RPS contracts on a prospective basis notwithstanding a failure to provide any notice that it was considering such modification, then its decision would violate the SAPA notice requirements. It is well-established that any rule adopted by the Commission following any proceeding in which it failed to substantially comply with the SAPA notice requirements will be null and void.⁴

⁴ See, e.g., *Matter of Cordero v. Corbisiero*, 80 N.Y.2d 771, 773 (1992); *Matter of Home Care Assn. of New York State, Inc. v. Dowling*, 218 A.D.2d 126, 128-30 (3d Dep’t 1996).

The Commission also should refuse to consider modifications to the RPS contract term because: (a) such change would increase the overall cost to achieve the RPS goal that customers are being compelled to finance; (b) extending the period over which customers are burdened by subsidizing uneconomic, fixed-price RPS contracts that would detrimentally increase the overall cost of the RPS; and (c) increasing the current, ten-year maximum term has not been justified in this proceeding.

Multiple Intervenors' concerns about the cost of the RPS are well-founded. Approximately ten years after the inception of an RPS in New York State, the subsidy that customers pay thereunder to procure Main Tier renewable energy projects is higher than it ever has been before.⁵ There is no indication that renewable generation projects are becoming cost-effective. To extend RPS contract terms to 20 years would be an admission that there is little to no hope that renewable generation projects will become cost-effective any time soon. It also would obligate and burden utility customers until at least the 2030s. Importantly, New York's energy consumers do not have unlimited resources. If ten-year contracts with substantial customer-funded subsidies are not sufficient to incent the development of renewable generation projects under current market conditions, then perhaps RPS-related expenditures and collections should be reduced – not increased – at least until market conditions change materially.

Significantly, although certain parties suggested that the Commission should increase the term of RPS contracts, such recommendation has not been justified in this proceeding. No party has presented any meaningful analysis or discussion of (i) the costs or benefits potentially associated with such an extension, or (ii) why the Commission should consider increasing the term of RPS contracts at this time.

For the reasons described above, the Commission should decline to consider increasing the term of RPS contracts in this proceeding. Such decision would be procedurally defective, has not been justified in this proceeding, and would increase the overall cost to achieve the RPS goal as well as extend the period over which customers would be compelled to subsidize the State's renewable energy initiative.

Respectfully submitted,

MULTIPLE INTERVENORS

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⁵ *The New York State Renewable Portfolio Standard Performance Report Through December 31, 2011*, NYSERDA (dated March 23, 2012) at 15 and Figure 3.