STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-E-0302 — In the Matter of the Implementation of a Large-Scale Renewable Program and a Clean Energy Standard

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COMMENTS ON THE CLEAN ENERGY STANDARD PHASE 1 IMPLEMENTATION PLAN PROPOSAL

PROVIDED BY

THE ALLIANCE FOR CLEAN ENERGY NEW YORK, AMERICAN WIND ENERGY ASSOCIATION, ADVANCED ENERGY ECONOMY INSTITUTE, and NORTHEAST CLEAN ENERGY COUNCIL

January 10, 2017

I. INTRODUCTION & SUMMARY

The Alliance for Clean Energy New York (ACE NY), American Wind Energy Association (AWEA), Advanced Energy Economy Institute (AEEI), and Northeast Clean Energy Council (NECEC), together the "Renewable Energy Parties," respectfully submit the following comments in the above-referenced proceeding, in response to the *Clean Energy Standard Phase 1 Implementation Plan Proposal* ("Implementation Proposal") released October 31, 2016, and the *Notice Soliciting Comments on Clean Energy Standard Phase 1 Implementation Plan*, issued by the Commission on November 1, 2016.

We offer comments on the entire Implementation Proposal (in the order that issues were presented in the proposal, as requested), but focus on the Tier 1 Renewable Energy Standard (RES) Long Term Procurement (Part 4) portion of the Implementation Proposal, as that is the component most vital to renewable energy developers. This component of the Implementation Plan is the most critical in attracting new private investment to New York and getting an adequate pipeline of new projects under development to ensure progress towards the 50% renewable energy standard (RES) and the REV goal of achieving a clean, resilient, and more affordable energy system for all New Yorkers. We generally support the approach that staff of NYSERDA and the DPS have put forward for the Tier 1 RES Long Term Procurement, but make recommendations regarding the threshold eligibility requirements and the bid evaluation process, which we believe will increase the clarity, stability, predictability, transparency, and objectivity of the process. Specifically, the Renewable Energy Parties recommend that the Tier 1 RES Long Term Procurement Program:

- **Maintain a rolling five-year NYSERDA long-term procurement schedule;**
- **Allow NYSERDA to procure 100% of a generator's RECs, and not be limited to 95% as in the RPS Main Tier;**
- **Calculate a Confidential Maximum Bid Price metric using realistic assumptions about revenue adequacy and consider the level of competition in a bid group in applying the maximum bid price;**
- **For threshold eligibility requirements, allow modestly more flexibility in site control, but require submittal of interconnection requests and Public Information Plans (PIPs) or Environmental Assessment Forms (EAFs);**
- **For bid evaluation metrics, maintain a high weighting on bid price and afford more weight to economic benefits than 10%;**
- **For the new bid evaluation metrics (project viability and operational flexibility), provide the opportunity for public comment on more specific and objective metrics;**
- **For the portfolio risk assessment, use only the diversity of resources metric and apply the assessment to a rolling two years' worth of award groups.**

More broadly, Renewable Energy Parties: (A) generally support the structure of the implementation plan for the CES, including the eligibility for Tier 1 and the process for certifying for Tier 1; (B) continue to have concerns with respect to the eligibility and

implementation of Tier 2, which we believe puts achievement of the 50% goal at risk; (C) advocate for a long-term procurement process that is as transparent, objective, and as fair as possible, as highlighted above; (D) generally support the structure for demonstration of compliance and reporting requirements, and (E) note that a critical aspect of implementation was left out of this Implementation Proposal: the confirmation of the targets 2017 – 2021 and provision of the targets 2022 through 2030.

As requested, our comments follow the outline of the Implementation Proposal.

II. COMMENTS ON CES PHASE 1 MPLEMENTATION PLAN

A. Renewable Energy Parties support the requirements for eligibility of Tier 1 resources and the process for certifying for Tier 1, and request clarification for behind-the-meter resources.

Renewable Energy Parties generally support the Tier 1 eligibility requirements, including the definitions of eligible upgrades, return to service, repowering, and relocation (Section 2.1). We suggest, however, that Staff consider further assessment of repowering as it applies to hydropower projects.. Replacement of a dam, for example, is expensive and just as vital to the operation of the project as the prime mover (criteria 2) though it may not create a 15% increase in the overall efficiency of the station (criteria 3). It also may not make sense to require the use of a hydropower prime mover that was manufactured after 2015. Further, hydropower turbines are long-lived, but are susceptible to accident or faster wear because of site-specific circumstances, so requiring that they operate for 50 years before being eligible for replacement (criteria 1) is extreme. For hydropower, it may be appropriate to rely more (or only) on criteria 5, that 80% of the tax basis is derived from capital expenditures made on or after January 1, 2015.

With respect to the eligibility of imported power, we support maximizing the construction and deployment of in-state renewable energy resources in order to bring private investment to New York State and to promote in-state economic development, but we understand that the *Order* E*stablishing a Clean Energy Standard* ("Order") allows imports in Tier 1, subject to

deliverability requirements, a mechanism that can be viewed as both needed to satisfy federal law and moderate cost impacts on customers. As such, we support the requirements for imports outlined in the Implementation Proposal. It is important to maintain the requirements that a Tier 1 eligible generator is either located in New York State or is in an adjacent RTO with the energy delivered into New York Independent System Operator (NYISO) territory and scheduled, transmitted, delivered to and settled in the NYISO energy market in each hour, and have a documented contract path from injection point of origin to delivery in NY, including provision of transmission rights. These criteria are important to the integrity and success of the RES.

Regarding the eligibility of behind-the-meter renewable energy resources, there is still the need for further clarification. It is important to dovetail the implementation of the Clean Energy Standard with other initiatives that will impact many of the same resources and customers. Based upon the Comments and Reply Comments submitted in the Value of Distributed Energy Resources (VDER) proceeding, it is evident that there are many unresolved issues surrounding the treatment of behind-the-meter resources in the context of VDER and in REV more generally. As AEEI, ACE NY, and NECEC noted in Initial Comments in the VDER proceeding, the Staff Proposal "does not differentiate between clean and conventional generation consumed behind the meter."[1] At the same time, many of the traditional Customer-Tier incentive programs for CES eligible behind-the-meter technologies have already been reduced or discontinued, such as for fuel cells, distributed wind, or digestor gas.

The timing of the first RES RFP in 2017 and the new requirements regarding provisional certification are such that project developers and financiers are already laying the groundwork for participation in the competitive solicitation. This preparation is heightened in the case of behind the meter projects, such as fuel cells, since an important additional participant, a customer, is involved in every project. We further note that on September 14, 2016 staff from the DPS and NYSERDA held a webinar on CES implementation which included a slide entitled "RES Tier 1 Behind-the-Meter Eligibility" which states that "For 2018 and beyond, the Tier I eligibility of CST, NY Sun, or other behind the meter (BTM) resources is being investigated in a separate proceeding Value of Distributed Energy Resources (LMP+D)."[1]

[1] September 14, 2016 NYSERDA/PSC Staff Clean Energy Standard Webinar, Slide 10.

Since the VDER proceeding has yet to reach a resolution on the treatment of behind-the-meter technologies; the relevant CST programs have already been terminated; and developers and potential customer-generators are already preparing for the 2017 solicitation after having received a signal that changes in status would not occur until at least 2018, a decision at this point to exclude behind the meter technologies from the RES Tier 1 long-term procurement program would represent a clear departure from the principle of gradualism and will cause market disruption.

We therefore recommend that no changes in the CES eligibility occur (i.e. from the Main Tier to the first RES solicitation) until the issues surrounding behind the meter resources in the VDER proceeding are resolved in a manner that establishes appropriate REV market signals reflecting the actual value of behind the meter resources, including generation that is not exported.

At a minimum, we request further clarification regarding eligibility of behind-the-meter resources for various project configurations, sizes, and technologies, including those that are participating in a VDER tariff and those that are not.

The Renewable Energy Industry generally supports the process included in the Implementation Proposal for Certification of Eligible Tier 1 RES resources (Section 3).

B. The requirements for eligibility of Tier 2 resources put cost-effective achievement of 50% renewable energy by 2030 at risk (Part 2.2.)

As articulated in the ACE NY Petition for Rehearing submitted in this proceeding,[2] we are concerned that without support through the CES for renewable energy projects built before 2003 and before 2015, these facilities are likely to either end operations or export their RECs to other markets. This same concern was voiced by Staff in Appendix A to the CES White Paper[3] which

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[2] October 31, 2016 . *Petition for Rehearing or Clarification of the Order of August 1, 2016 Adopting a Clean Energy Standard.* Case 15-E-0302. Submitted by Alliance for Clean Energy New York.

[3] January 1, 2016. *Staff White Paper on Clean Energy Standard.* Case 15-E-0302. New York State Department of Public Service.

stated, "In the absence of a New York policy that creates sufficient value for RECs from Legacy RPS Projects, the energy and RECs from most of these resources are likely to leave the market, most likely to the New England states, as their owners search to maximize revenues. This departure would preclude New York's ability to claim that renewable energy supply toward CES goals, as the right to make such claims accrues to the rightful purchasers of the associated REC."[4] For this reason, the eligibility and compensation approach for Tier 2 should be revisited. At a minimum, Tier 2 should be broadened to include all technology types eligible for Tier 1 that were in operation before 2015. These resources have the same environmental attributes, and their leaving the state would have the same effect on climate goals, local economies, and the achievement of the 50% mandate as other resources included in the CES.

Further, reconsideration should be given to how Tier 2 could be better aligned and integrated with the rest of the Clean Energy Standard structure, rather than be a replication of the RPS Maintenance Tier. The CES should include a Tier 2 that is inclusive of all existing renewables (pre-2015) and allows Tier 2 resources be compensated for their attributes, at the level of their opportunity cost in other jurisdictions or otherwise based on the value of those attributes, as well as be provided with an opportunity to participate in a separate Maintenance Tier if necessary. This will be more sustainable and successful in achieving the 50% mandate; will result in lower overall costs to New York consumers over the long-run; and will better integrate with neighboring states. This approach is more likely to create a regional REC market that is competitive and rational, and avoid unintended negative consequences with respect to the potential sale of New York RECs in other compliance markets while they are being claimed in New York towards achievement of the 50% mandate.

Further, our member companies have concerns with the Maintenance Tier as it has been historically implemented. We recommend, for example, that the scope of the "cost of retention" comparison made between existing renewables and new facilities participating in the Tier 1 REC program should also take into account the costs associated with non-retention, such as the loss of baseload generation, the loss of local economic benefits, and loss of fuel diversity benefits.

[4] January 1, 2016. *Staff White Paper on Clean Energy Standard.* Case 15-E-0302. New York State Department of Public Service., Appendix A, Page 5.

Some of these benefits are reflected in the scores of comments submitted by elected officials, non-profit organizations, facility suppliers and employees, among others, which the Commission expressly acknowledged in their 12/15/16 *Order on Petitions for Rehear*ing in this proceeding.

A narrow scope for assessing the "cost of retention" may not tell the whole story, nor properly value the cost of losing the facility or its renewable attributes, and it may have the unintended effect of reducing fuel diversity and putting at risk achievement of the 50 by 30 goal. Only similarly situated new and existing renewable technologies should be grouped for cost comparison to derive an accurate measure of the costs/benefits of retaining existing facilities. We also note that a cost-of-service basis for compensation alone is insufficient to address retention of existing renewable resources, including their opportunity for export to other jurisdictions, which would result in higher cost outcomes for New York consumers to achieve the CES targets over the long-run.

In the Implementation Proposal, the Commission's references to "locational considerations" and "program options" seem to offer DPS Staff more flexibility than did the CES Order, including as to eligibility, benefit and contract formation and terms. However, the overall focus appears to remain on cost of retention while the entire suite of benefits should be weighed and balanced against these support costs to derive a true measure of the net cost of retention.

Due to recent volatility in wholesale electric prices, the long-term, fixed price contract model currently in use in the Maintenance Tier has proven inefficient. There are many possible alternative approaches for the maintenance tier contracts, such as contracts for differences or contracts that permit periodic reviews and adjustments to the REC pricing, either up or down, depending on market conditions. The Implementation Proposal should be amended to articulate this contract flexibility.

Further, the Maintenance Tier as currently configured only generates enough revenue to maintain operations at existing facilities. In other words, Maintenance Tier facilitates survival of existing RECs, and does little to incent investment, improvement or innovation intended to increase efficiency or extend existing operations. Offering Maintenance Contract terms that present the

opportunity for a return on investment would monetize the non-REC contributions of these existing facilities to the communities in which they are present in terms of employment, tax revenue, community enhancement and participation. These benefits should be better accounted for in the CES Maintenance Tier, and in Tier 2 in general, to value existing resources outside of strictly a cost-of-service approach.

Finally, Renewable Energy Parties recognize that the recent Commission Order denying the various petitions regarding Tier 2 also acknowledged that there are important issues with respect to existing renewables that need to be addressed prior to the triennial review. In the context of this impending work, it may be possible to both establish a minimum price for pre-2015 renewables that accounts for the value of these resources in providing carbon-free power and contributing to the 50% mandate, while also offering a Maintenance Tier type component that is based on a demonstration of financial hardship and considers the full costs and benefits of retention of a specific facility.

C. The long-term procurement process should be as clear, objective, fair and as transparent as possible.

The Tier 1 RES Long Term Procurement component of the CES Phase 1 Implementation Plan, as delineated in Section 4, is the most critical component of the CES for renewable energy developers and is an imperative for attracting private investment in renewable energy development in New York. Without a fair, objective and transparent long-term procurement component, renewable energy companies would not be willing or able to embark on the lengthy, high-risk and expensive development process in New York. Thus, the design of the long-term procurement process is critical to the success of the RES.

Section 4.1 of the Implementation Proposal indicates that NYSERDA will issue a request for proposals (RFP) for a designated quantity of RECs once per year, at minimum. The NYSERDA 11/1/16 *Filing Regarding Renewable Energy Standard 2017 Compliance Period* in this proceeding indicates that this RFP will be released in April. The Renewable Energy Industry supports this approach; notes the need for certainty and regularity in the scheduling of RFPs; and supports the commitment that if 90% of the designated quantity of RECs are not procured via the

first RFP, a second RFP will be released during the same calendar year. Further, we support that 20 year contracts for wind, solar, and hydro RECs will be used in the long-term procurement program, with 15 year contracts used for landfill gas and 10 years for tidal/ocean projects, and with new contracts for currently operating facilities that span a period of 20 years minus the number of years it has already been operating.

Renewable Energy Parties emphasize the importance of certainty and stability for this procurement system to succeed. A set five-year NYSERDA procurement schedule, as was included in the CES Order, is critical to attracting new project proposals and ensuring companies will invest in the design, development, interconnection, and permitting processes. A rolling, five-year procurement schedule should be confirmed and publicized each year by the Commission. Also important to the stability and integrity of the CES is consistent LSE obligations. While the amount of MWhrs of the LSE obligation in future years may vary because of variations in load levels, it is essential that the percentages of load needed to meet the LSE obligation be fixed and certain going forward. Revisiting or adjusting the load percentages that are the heart of the LSE obligation would undermine the business certainty needed to induce development. We would note with concern the decision to reduce the LSE obligation in 2017, a decision that might be justified as a one-time change as the CES implementation structure was being developed, but a change that still sets a troubling precedent.

Renewable energy parties strongly recommend that renewable energy generators be allowed to sell 100% of a project's RECs to NYSERDA. The previous RPS Main Tier policy limiting NYSERDA's purchase to 95% of a project's RECs should be eliminated. Given the size of New York's RES goal, it is essential that NYSERDA have access to as many cost-effective RECs as possible. Additionally, enabling sellers to provide 100% of their RECs instead of 95% should have some marginal cost benefit to NYSERDA, LSE's, and consumers since sellers would be able to price their projects based on a fixed price for 100% output instead of 95%. Historically, sellers likely had to discount the 5% of RECs they could not sell to NYSERDA since the price they may receive in the voluntary market was unknown.

Under the RPS Main Tier, awardees were given the opportunity to suspend their RPS contract if they were making sales into the voluntary market. NYSERDA should consider continuing this contract flexibility for Tier 1 and Maintenance Tier contracts under the CES. A facility awarded a CES contract would be able to suspend or terminate that contract at a future date in order to make sales to a third party within New York State. This would allow generators flexibility to respond to new opportunities in a way that preserves their attributes for NY.

Section 4.1 also covers the expected commercial operation milestone date. Under this proposal, a developer would have two years from bid acceptance to achieve commercial operation, with the option of extending this period by four 6-month extensions provided the developer posts additional contract security or enters an interconnection agreement. Renewable Energy Parties support this approach.

Registration in NYGATS: Section 4 also proposes that all generation facilities must register in NYGATS and create NYGATs certificates to receive payments. We are supportive of this approach.

Confidential Maximum Acceptable Bid Price Evaluation Metric. Renewable Energy Parties have concerns regarding the proposed Confidential Maximum Acceptable Bid Price Evaluation Metric ("Maximum Bid Price"). We recognize that this is a consumer protection mechanism and that it was a feature of the RPS Main Tier implementation for the last ten years. This feature limited both the costs and the success of the RPS Program.

As an alternative to the Maximum Bid Price approach, NYSERDA could consider applying some type of competitiveness test. If the response to an RFP met some metric of competitiveness, such as the amount of MWhrs bid compared to the amount required and/or the total number of bidders responding, this could obviate the need for a Maximum Bid Price. This approach would be premised on the fact that if there is robust and vigorous participation among multiple bidders, this will provide the competition that will discipline pricing and alleviate the need for a cap. There is an important role for competition in driving the best available price and protecting consumers while still progressing steadily towards the 50% goal.

If a Maximum Bid Price approach is used, it will be essential that the Maximum Bid Price be structured to account for real market conditions faced by project developers. Project developers must achieve revenue adequacy to construct and operate projects. In an efficient market, revenue adequacy would equal cost recovery plus a reasonable, risk-weighted rate of return. For variable renewable energy projects, like wind and solar, revenue adequacy will primarily be achieved through a sum of energy and REC revenues.

Under the RES, some developers of wind and solar projects will be able to obtain fixed priced RECs for 20 years, but their energy revenues will be highly uncertain. We would expect rational developers to base their projected energy revenues on the market price for a long-term energy hedge. This product will most closely resemble the market value for long-term energy. Renewable Energy Parties strongly recommend that NYSERDA base its Maximum Bid Price on energy hedges available in the market. To do this, NYSERDA could survey banks or other entities willing to engage in long-term energy hedges with project developers.

It is possible that there will be limited available counterparties for long-term energy hedges. To the extent this is the case, NYSERDA may rely on market data for more limited durations for which there is more liquidity. However, we strongly caution NYSERDA not to rely on forward merchant energy curves which use escalators that have no rational basis. Rational developers are unlikely to make decisions based on overly optimistic forward merchant curves, nor can developers obtain an energy hedge that is reflective of such projections. In other words, forward energy curves with exceptional escalators for forward years do not represent the real market for energy in New York.

In short, if New York is to achieve the ambitious RES targets, there must be project developers able to achieve revenue adequacy. For this to occur, the Maximum Bid Price must be set such that it reflects the market conditions under which a rational developer is able to transact. NYSERDA's Maximum Bid Price must be based on long-term energy prices that developers can obtain in the market, not on unrealistically optimistic merchant forward curve projections.

Section 4.2 RES Procurement Design: Section 4.2 lays out the two-step process that NYSERDA would undergo to evaluate bids in response to an RFP. In the first step, generators would need to demonstrate that they are (1) certified (if they are already operating) or provisionally certified (if they are not yet operating) and (2) meeting some threshold eligibility requirements related to project development maturity.

Renewable Energy Parties recognize the motivation for NYSERDA and DPS staff ("Staff") to establish threshold requirements for bidders, and shares Staff's concerns that contracts would be awarded to projects that ultimately do not get built. In this scenario, otherwise worthy projects would not be awarded contracts, with negative consequences for the landowners and local officials that supported them, as well as for investors who would be unfairly deprived of a reasonable return on their high-risk dollars. And, NYSERDA would fail to procure the targeted amount of RECs at the lowest cost. We also fully understand that there should not be undue obstacles to bidding which might preclude otherwise cost-effective proposals. Unnecessary barriers to entry could lead to unnecessarily higher program costs. With this need for balance in mind, we suggest certain simplifying modifications to the threshold criteria:

- ✓ Projects should simply be required to be Provisionally Certified by NYSERDA and
- ✓ Have filed interconnection request with NYISO (and have gotten an NYISO letter saying it is a complete request) or the distribution utility, unless the project capacity is less than 5 MW in which case they meet the criteria in the Implementation Proposal;
- ✓ Have filed the public information plan (PIP) for projects subject to Article 10 and a short or full EAF for projects subject to SEQR, and provide that to NYSERDA along with a matrix of required permits; and
- ✓ Demonstrate site control by the criteria outlined in the Implementation Proposal, modified for projects involving 15 acres or more. For these 15+ acre projects, bidders should be required to demonstrate site control for 70% of the acreage needed for turbine foundations (for wind) or, more generally, for construction of the generating equipment. To simplify this requirement, this 70% metric should *not* be based on land needed for connectivity, setbacks, or other needs. Further, the 100% land control deadline should be changed from 120 days after contract award to 12 months before commercial operation milestone date. Bidders exercising this option should be required to provide NYSERDA quarterly updates on land control until they can demonstrate 100% control.

The criteria that we have listed above are in some cases more stringent than the Implementation Proposal (e.g. requiring an interconnection request instead of a draft, or requiring an EAF instead

of a list of permits needed), but are also more streamlined. We believe that they represent actual project development milestones rather than evidence of research, and as such, are better indicators of project maturity and therefore probability of success.

With respect to site control, our recommendation is informed by developers' experience in New York. The requirements in the Implementation Proposal to demonstrate 80% land control at time of bid and 100% within 3 months after contract award seem unrealistic. Many otherwise viable projects would not be able to meet that requirement, especially considering that NYSERDA is proposing to allow a project up to four years to begin operation. If, for example, a wind project requires nine months for construction, this requirement would represent full land control three years before the start of construction. Further, a project often requires land control not just for turbines but for setbacks, distribution lines, or other requirements which are not fully defined until later in the permitting process. For both of these reasons, we are proposing that the eligibility requirement related to site control be modified to 70% of the land required for the main generating equipment at the time of the bid, and 100% of the land required for the main generating equipment within 12 months of the commercial operations milestone date.

We also note that these threshold criteria may not be appropriate for offshore wind development and may have to be modified to fit the unique circumstances and timelines of offshore wind.

Section 4.3.v. indicates that there will be a bid deposit requirement, but does not indicate at what level this deposit will be set. We suggest that (1) the bid deposit requirement be calculated based on a fixed $/MWh amount to account for the issue regarding project size raised in the Implementation Proposal (at page 21), and (2) the required bid deposit amount be published by NYSERDA for comment prior to bid awards.

Section 4.4. of the Implementation Proposal describes step two in the evaluation process: bid evaluation and ranking. Bid evaluation procedures are critical to the equity, cost-effectiveness, objectivity, and transparency of NYSERDA's procurement program, and thereby are critical to overall program success. The Implementation Proposal suggests using a weighted scoring system; 70% based on bid price on a net present value basis, and 30% on three factors: (1)

economic benefits, (2) project viability, and (3) operational flexibility and peak coincidence. In the Implementation Proposal, there are vague descriptions of how project viability and operational flexibility will be judged. We have the following comments on these bid evaluation criteria:

- We support a bid evaluation methodology that maintains a high weighting on bid price. This is in keeping with the imperative of cost-effectiveness. This is an important program element to ensure the best value and most cost-effective mix of renewable energy projects will be deployed to achieve the 50% CES.

- We support the continued use of local economic benefit as a criterion, and believe it should be weighted at more than 10%. Local economic development benefits – jobs, payments to municipalities, in-state purchase or consumption of goods and services - are key co-benefits of renewable energy development and the RES, and help support economic development in the Empire State. It is important to maintain a weighting higher than 10% to value these economic development benefits, especially in the near-term given the new modifications to the eligibility requirements in the RES Tier 1 versus the RPS Main Tier with respect to hydropower. We understand the desire to reduce the relative weighting for economic benefit "to allow additional criteria to be included in the quantitative scoring criteria"[5] but we believe that the economic benefits deserve additional weighting. One potential approach is to also address the other desired project characteristics (i.e. project viability and operational flexibility and peak coincidence) via the application of threshold criteria and/or in the portfolio risk assessment. Further, we fully support the implementation of changes to streamline the submittal of information to demonstrate economic benefits and to streamline the task of NYSERDA and the Technical Advisory Panel in reviewing that information, as described in the Implementation Proposal.

- We suggest that the 10% weighting for project viability be either eliminated or modified, re-proposed, and then finalized prior to issuance of the 2017 RFP. We fully understand and agree with NYSERDA's interest in not awarding contracts to projects that are not

viable. But we find the criteria as described on Page 24 to be vague and not transparent. The Implementation Proposal states, "NYSERDA and the TEP will utilize the information submitted by bidders with their Step One packages and any other information NYSERDA may reasonably request, or independently observe, in evaluating bids against the criterion. Specific evaluation criteria details will be published in the relevant solicitation," (Implementation Proposal, page 22). This provides little information and does *not* provide an opportunity for public input on the actual criteria prior to their finalization in the RFP. Again, while we understand the motivation for this criterion, it seems completely undefined and thereby open to unfair subjectivity. Further, as there will be no opportunity for public comment on the actual criteria to be used, as it will be already published in the RFP when it is first available to the public, this limits transparency. As an alternative approach, we suggest that project viability be further defined over time with specific objective milestones that are directly related to the maturity of project development. These more defined and objective metrics can then be utilized in future solicitations after the opportunity for public comment, either as threshold criteria or in bid evaluation.

- We also suggest that the 10% weighting for operational flexibility and peak coincidence be better defined. Operational flexibility and peak coincidence are fully in keeping with the objectives of REV and we support their inclusion as an evaluation criterion. Further, we recognize the benefits of generation sources that can be dispatched such as "to balance the electric system, to optimize generation dispatch, to minimize operating reserve requirements and to address grid congestion and constraints." Further, we fully recognize the importance of technology diversity in CES implementation, in recognition that it will very likely be necessary to pursue the full range of renewable energy technologies to maintain forward progress towards the 50% mandate. In contrast to the prior criterion (project viability) it seems more possible to establish clear and objective criteria for awarding points under this criterion. Still, these criteria were not clearly articulated in the Implementation Proposal, which indicated for this factor, "Specific evaluation criteria details will be published in the relevant solicitation." Ideally, project developers would know how many points would be awarded for specific characteristics

of a project, and would have the opportunity to comment on a specific proposal prior to its finalization in the 2017 RFP.

We also note that the policy objective of operational flexibility and peak coincidence is at least partially addressed via the bid price. Project developers will set their bid price based on revenue requirements and expected revenue from the wholesale electricity market. If a project is located in a high capacity market or generates coincident with peak, that value should be reflected in the REC price that is bid to NYSERDA. Further, technology diversity could be viewed as a proxy for this characteristic, as different technologies will have different attributes related to operational flexibility and peak coincidence. We are not suggesting that these are reasons to *not* use this as a criterion in bid evaluation, but to recognize that evaluation of this factor can be complemented by other parts of the evaluation process.

Section 4.4.iv.d ("Application of Portfolio Risk Assessment") of the Implementation Proposal describes the next step in the process. After application of the criteria discussed above, the evaluation panel would then rank each bid and develop a preliminary award group. This preliminary award group would then be examined relative to three questions: (1) Does the preliminary award group rely on one technology to provide 80% or more of the MWh? (2) Does the preliminary award group rely on one company to provide 80% or more of the MWh? and, (3) Does the preliminary award group include any company for which the awarded project(s) constitute five times more renewable capacity than that owner has successfully brought to operation in the past? According to the Implementation Proposal as we understand it, if the answer to any one of these questions was "yes," the evaluation panel would adjust the ranking of projects to ensure that the answer to each of these questions became "no," as long as the weighted average REC price for that procurement cycle did not increase by more than 10%.

Renewable Energy Parties understand Staff's motivation for including the Portfolio Risk Assessment, and we share New York State's interest in ensuring that the awarded projects are truly viable and are successfully brought to commercial operation. Still, we believe that there are potential unintended consequences of the approach as proposed.

- First, we fully support the cost cap included in the Portfolio Risk Assessment, i.e. that the preliminary award group will only be adjusted if the increase in the weighted average REC price is limited to 10%. This is an important component that must be retained, regardless of what factors/questions are used in the risk assessment.

- Diversity of resources in the overall Tier 1 portfolio is important for a number of reasons. First, New York is going to need the full range of renewable energy technologies to achieve success, including solar, land-based wind, offshore wind, biogas and sustainable biomass, hydropower, and fuel cells. No one technology will allow New York to reach the 50% goal. Second, technology diversity is an important proxy for operational flexibility and peak coincidence, as mentioned above. Third, technology diversity can also serve as a proxy for geographic diversity, as different parts of the state are more amendable to wind development, solar development, storage deployment, fuel cells, offshore wind, et cetera. Geographic diversity serves other public policy objectives – such as REV objectives and distribution of local economic development benefits. For these reasons, we support inclusion of the technology diversity question in the portfolio risk assessment.

- In contrast, constraining awards to less than 80% for one company or owner likely will not serve public policy goals. As more companies diversify, it is possible that one company could have more than one proposal in response to a particular solicitation and/or have projects using more than one technology. If these projects meet threshold requirements related to viability, and are ranked high on price and operational flexibility (and also possibly project maturity), and demonstrate technology diversity as described above, restricting ownership seems unnecessary and potentially counterproductive.

- Constraining awards to a particular owner such that the awarded project(s) are less than five times the renewable capacity that the owner has successfully brought to commercial operation in the past could also have some unintended consequences. There could be, for example, a new company with otherwise worthy projects. Consider if a group of

developers with significant experience in wind development in New York State formed a new company (not an unlikely scenario) and their combined experience makes it very likely that they will be more successful than an established development company that has developed many projects outside of New York, or even outside of the country, but not in New York. Further, a company could be very experienced in wind development, but be very new at solar development. In this case, the capacity of their previous renewable energy projects might not be a strong indicator of success. In contrast, there could be a company that is very experienced and established in New York that has focused on small behind-the-meter solar projects and is looking to diversify into utility-scale solar. This company might have a better chance of development success than a company that has specialized in utility-scale solar in the West or outside of the U.S. Also, there could be an offshore wind company that has extensive experience overseas, but no experience in the U.S. It is unclear from the Implementation Proposal if that that experience would count in this assessment. In short, this criteria will overly benefit established companies and companies that have developed large projects, and could serve as an undue barrier for emerging or diversifying companies, or for those that have specialized in smaller projects in the past. We recommend that it not be used.

- Lastly, NYSERDA may want to consider an alternative approach: apply a portfolio risk assessment over several years, rather than to each preliminary award group. This could achieve the same desired portfolio diversity, but avoid an approach that could skew any particular award group. The portfolio risk assessment could be applied, for example, to all projects awarded in a two-year period. Under this approach, the 2017 solicitation process would apply the portfolio risk assessment to just that 2017 group, but the 2018 solicitation could apply the risk assessment to all projects awarded in 2017 plus those ranked for award in 2018.

Contract security requirements are discussed in Section 4.6.a. which proposes that each REC seller would provide monetary contract security ($/MWh) within 10 days of selection for a contract, and then again at one year from contract award. Sellers of RECs would be required to provide additional security (again in $/MWh) to extend the deadline for commercial operation

(COMD) beyond two years from the date of award, and would have the option of doing so for four six-month periods. If at any of these milestones the COMD is not met and there is no extension, the contract may be terminated. While we support this approach, we note that the proposal does not specify the required amount of contract security for each of these payments, and this should be determined by Staff and published prior to or in the first RFP.

Section 4.6.a. also states, "In order to increase the likelihood of generation facilities with long term REC contract awards successfully coming to fruition, NYSERDA and Staff propose to modestly expand the opportunity for extending the commercial operation milestone date by virtue of posting additional security or entering into an interconnection agreement, and advance the date of the step increase in contract security." In the 11th RPS Main Tier solicitation, the period from issuance of the RFP until the initial COMD was about two years, with an additional five calendar quarters possible. Under this Implementation Proposal, as described above, Staff proposes to allow two years from award until COMD with four six-month extensions possible. Renewable Energy Parties support this change as described in the Implementation Proposal, given the challenges and complexity involved in developing and permitting projects. We also note that NYSERDA could consider modifying the COMD requirements to be applied in the 11th RPS solicitation to be consistent with what will be used in the 2017 RES RFP, especially since those contract awards have not yet been announced. This approach would provide consistency and fairness, and increase the chances of project success.

Post-2017 Procurements. Section 4.7 of the Implementation Proposal discusses future potential changes to pricing, threshold eligibility requirements, and evaluation criteria weighting. Renewable Energy Parties understand from this Section that the comprehensive plan for implementation of the CES is a work-in-process and that the first Tier 1 solicitation in April 2017 may in fact differ significantly from future solicitations. While it is difficult to respond specifically to Section 4.7, as there are no specific proposals put forward, we look forward to working with Staff and other stakeholders as CES implementation evolves. In general, we would recommend that any future changes be gradual; recognize development timeframes in terms of how long it takes to influence the types of projects that are in the pipeline; be designed not to

disrupt markets; and be designed to stimulate, facilitate, and maintain a robust development pipeline of diverse renewable energy projects in New York.

D. The demonstration of compliance and reporting requirements are reasonable.

Sections 5 and 6 of the Implementation Proposal cover the procedures for load serving entities (LSEs) to demonstrate compliance with the CES (Section 5) and the obligations of state agencies to report on compliance with the CES (Section 6). Renewable Energy Parties support these components of the Implementation Proposal. This includes how LSEs will demonstrate compliance via NYGATS; how LSEs will "true-up" in the months following the conclusion of each compliance year; the limitations on REC trading and banking; and the timelines included in the proposal. We note the importance of accurate and comprehensive REC tracking via NYGATS, especially with respect to understanding what pre-2015 renewables can appropriately be counted towards the 50% mandate and what the size of Tier 1 obligation needs to be to achieve 50%.

We also support, and highlight the importance of, the State's role in compliance reporting activities, including timely issuance of compliance reports for each LSE; reporting of NYSERDA's success in long-term REC procurement; public notice of the results of RFPs and the development status for all active contracts; reporting of aggregated quantities of RECs procured and disposition of these RECs; and a summary of ACPs received and their use. We also support the periodic program evaluation requirement, including the evaluation of economic impacts and greenhouse gas emissions reductions, comparison to other states, and the impact of the voluntary market. In total, this reporting regime will enhance accountability and make the CES stronger and ultimately more successful.

E. Certain critical aspects of implementation were left out of this Implementation Proposal, including the confirmation of the targets 2017 – 2021 and provision of the targets 2022 - 2030.

Shortly after the release of the *Order Establishing the Clean Energy Standard*, staff from the DPS and NYSERDA held a webinar [6] on the *Order*, which also included a schedule for

[6] September 14, 2016 NYSERDA/PSC Staff Clean Energy Standard Webinar

implementation planning. Per that presentation, there were several issues scheduled to be included in this Phase 1 Implementation Proposal that were not included. For example, the confirmation of the LSE obligations 2018-2021; the establishment of targets 2022-2030, the methodology for setting the ACP after 2017, the disposition of ACP funds; and the method for pricing RECs after 2017 were all issues that were not included in this Implementation Proposal. All of these are important issues that need to be decided in order to cement the CES and ensure its smooth and successful implementation. They are also issues that deserve the opportunity for public comment.

With respect to setting both the LSE obligations and the NYSERDA procurement targets, Renewable Energy Parties strongly recommend that the Commission set annual compliance targets out to 2030 with the option to review targets as needed, rather than setting the goals every three years. In previous filings, we have supported the triennial review of targets, but only in the context of annual targets being established at the start of the program and criteria articulated regarding what would cause the targets to be adjusted either upwards or downwards. An important strength of the CES mandate is that it can create long-term certainty for renewable energy market participants by establishing a strong market signal through 2030, as RPS policies do in other states. At this time, this aspect of the CES is still missing. Further, the annual targets (both for the LSE obligation and for the NYSERDA long-term procurement program) should be calculated based on clear and public assumptions (e.g. for load growth, for energy efficiency, for behind-the-meter renewable generation, for the baseline of existing renewables, and for growth in the voluntary market), and based on what is reasonably required for the steady progress towards the 50% by 2030 mandate. This schedule of annual targets should be designed to take advantage of federal tax policies as much as possible and not backload obligations.

III. CONCLUSION

Renewable Energy Parties applaud Staff for their thoughtful consideration of how to best implement the Renewable Energy Standard portion of New York's new Clean Energy Standard. In general, we support the structure and rules described in the Implementation Proposal and believe its finalization will allow both the 2017 LSE obligation and the 2017 long-term

procurement to proceed early in 2017. It also represents strong progress towards final RES design. As stated by the Commission in the recent *Order on Petitions*:[7] "A continuous incentive to build new facilities is essential to the RES program." Accordingly, the RES needs to be designed to clearly and with certainty provide that incentive starting in 2017 and continuing, even as it continues to evolve, through 2030. As described above, the renewable energy industry recommends that some adjustments to the bid evaluation process be made to make the process more streamlined, more objective, and more transparent, while still achieving the Commission's goals. Specifically, we suggest making the threshold criteria clearer and simpler; increasing the weighting for local economic development benefits; making the criteria for project viability be more objective milestones of development maturity; being more specific on metrics for operational flexibility and peak coincidence; and eliminating two of the factors in the portfolio risk assessment.

Finally, we note that among the issues not covered in this Implementation Proposal, the most important was the provision of targets – both for the LSE obligation and for the NYSERDA long-term procurement – out through 2030. Even recognizing that these targets may be subject to change during a Triennial Review, the CES would be more sustainable and impactful with provisions of these targets and public understanding of the criteria under which they may be adjusted upwards or downwards in future reviews.

Thank you for the opportunity to comment.

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/s/ Andrew Gohn
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[7] New York Public Service Commission. December 15, 2016. *Order on Petitions* in CASE 15-E-0302 Clean Energy Standard.

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