

**COMMENTS OF THE ALLIANCE FOR CLEAN ENERGY NEW YORK (ACE
NY) ON SAPA NOTICE 03-E-0188SP25**

I. INTRODUCTION

The Alliance for Clean Energy New York (ACE NY) respectfully submits the following comments in the Renewable Portfolio Standard (RPS) program proceeding. ACE NY is a non-profit organization whose mission is to promote the use of clean, renewable electricity technologies and energy efficiency in New York State in order to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Members of the Alliance for Clean Energy New York (ACE NY) include non-profit environmental, public health and consumer advocacy organizations, educational institutions, and private companies that develop, produce and sell renewable energy and renewable energy technologies as well as energy efficiency services in New York. The comments contained herein do reflect discussions with the membership of ACE NY but are ACE NY's own perspective and should not be construed as representing the opinions of any particular member. ACE NY appreciates the opportunity to provide the Public Service Commission (Commission) with its perspective on the important issues raised in the notice for public comment, although these topics are ones that ACE NY has already commented on several times during the proceeding.

First, we do believe it is critical for NYSERDA to have the ongoing authority to schedule solicitations for renewable resources to meet the state's clean energy goals

without having to repeatedly return to the Commission; in fact, we note that NYSERDA was expected to have issued a solicitation during the summer but was unable to do so, apparently for legal or technical reasons of having no explicit authorization. This is resulting in a delay in getting clean energy resources on line and will mean that the state will need to work harder and faster in coming years to meet its goals.

Second, we continue to maintain that the provision of economic benefits to New Yorkers is a critically important component of the RPS. While clean power generation provides important public health, environmental and energy security benefits, the economic paybacks are also crucial and substantial. The provision that 30 percent of the bid evaluation be conducted based on economic benefits to New Yorkers is sound public policy. In addition, counting only economic benefits that are “incremental” because of a NYSERDA contract is not a rational approach given how clean energy projects are developed and could result in ratepayer money supporting out-of-state projects that will provide limited benefit to New Yorkers over time.

II. EXPLANATION OF ACE NY’S POSITIONS

A. LONG TERM SOLICITATION AUTHORIZATION IS PAST DUE

As the administrator of the RPS program, NYSERDA issues the solicitations for bids in consultation with Department of Public Service (DPS) staff. However, its ability to effectively schedule and conduct regular procurements has been hampered by the need to obtain Commission approval prior to each solicitation. The unfortunate result is a development community unable to plan properly and a start and stop approach to the program. ACE NY has repeatedly called for a complete schedule of procurements issued

well in advance to help facilitate planning and to build industry confidence in New York's programs. We are, therefore, please to see the Commission propose to:

(a) authorize NYSERDA to conduct, after consultation with the Department of Public Service, no less than one solicitation per calendar year, which authorization would allow NYSERDA to conduct as many solicitations per calendar year as NYSERDA deems necessary to implement the RPS Main Tier program without further or individual authorizations for solicitations by the Commission.

ACE NY wholeheartedly endorses this proposal and urges the Commission to adopt it as soon as possible and for NYSERDA to immediately thereafter issue both a new solicitation and a schedule of procurements (including dates and approximate amount of money available) for the next three years. Developers must invest substantial sums of money prior to participating in RPS solicitations; knowledge of procurement timelines will provide much needed certainty and facilitate continued investment in New York.

B. AN IMMEDIATE SOLICITATION IS KEY TO BENEFITS

ACE NY believes it is imperative for NYSERDA to issue a schedule for regular procurements. In addition, NYSERDA should act immediately after a decision by the Commission to issue a solicitation for as many megawatt-hours of new renewable generation as possible.

Current favorable federal policies in support of renewable energy investment are available now and will serve to reduce the cost of the program to NYSERDA and draw investment to New York. For example, the Investment Tax Credit and the Production Tax

Credit expire at the end of 2012. NYSERDA should consider issuing solicitations that obtain as many of the resources necessary to meet the 2015 state goals with projects put into operation prior to the end of 2012 in order to take advantage of the ITC and PTC. The contracts could have staggered start dates since NYSERDA can only distribute funds that have already been collected. This would allow facilities to obtain an RPS contract and therefore obtaining financing to construct and operate even if the actual NYSERDA payments do not flow to the project until well after the project begins operation. In other words, a project with a NYSERDA contract can build and begin to operate prior to the end of 2012 and yet the terms of the contract may specify that NYSERDA will not begin to actually purchase the Renewable Energy Credits (RECs) until 2013.

C. ECONOMIC BENEFITS TO NEW YORK ARE AN ESSENTIAL CRITERION

The Commission has asked for comments on potential changes to how economic benefits to New York should be evaluated in the bid evaluation process. The options proposed for Commission consideration include:

- (1) Whether the economic benefits category for bid evaluation should be continued or eliminated;*
- (2) Whether the 30% percentage value established for the economic benefits evaluation approach is effective and reasonable, or whether some other percentage value should be used;*
- (3) Whether the requirement that "non-incremental" economic benefits not be counted for facilities already in commercial operation should be continued or eliminated;*
- (4) Whether "incremental" economic benefits should be measured:*

(a) As of the date of the particular solicitation;

(b) As of the date of the particular contract award;

(c) Fixed as of the date (January 8, 2010) of the order setting the requirement that non-incremental economic benefits shall not be counted;

or

(d) A date certain in advance of the date of the particular solicitation, such as one or two years prior to the date of the particular solicitation.

(5) Whether other changes regarding bid solicitation eligibility or bid evaluation design details and methodologies should be made.

ACE NY believes ensuring economic benefits to New Yorkers is an essential component of the NY RPS. In addition, the only reason we can see for the Commission to consider eliminating economic benefits as a criterion for awards would be to lower the REC price. However, not only have REC prices been low in relation to neighboring states as is, eliminating the criterion would be unlikely to result in lower prices as long as the energy delivery requirement was maintained. Needless to say, we are fundamentally opposed to changing the delivery requirement since without it ratepayer funds would not be used for any meaningful benefit to New Yorkers at all.

C.1. (1) Whether the economic benefits category for bid evaluation should be continued or eliminated

ACE NY firmly believes, as we have stated repeatedly in comments in this proceeding, that the economic benefits to New York brought by RPS funded projects are critical to meeting the goals of the RPS program as a whole. Supporting out of state projects that provide limited benefits to New York is not the wisest use of ratepayer

funds. RPS contracts provide revenue to project owners over a 10-year period. At the end of that 10-year contract a project owner has no obligation to sell either RECs or energy to New Yorkers. In-state projects, on the other hand, will continue to participate in New York wholesale energy markets regardless of where their RECs are sold, and in-state projects will continue to make payments to their host communities as payments in lieu of taxes and land leases, as well as having local staff. The energy delivery requirements for out-of-state projects *may* deter out-of-state projects from bidding into the RPS but we do not believe that requirement alone is sufficient nor appropriate to rely upon; far better to incorporate economic benefits into the evaluation to ensure New Yorkers truly benefit over the long term.

C.2.(2) Whether the 30% percentage value established for the economic benefits evaluation approach is effective and reasonable, or whether some other percentage value should be used;

The current weighting for in-state benefits should be retained or increased. It is important that ratepayer funds be used to secure resources that will continue to benefit New Yorkers for the long term and not just the length of the NYSERDA contract. Studies consistently show that renewable energy provides a variety of benefits compared to fossil fuels. For examples, please consult the National Academy of Sciences report, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use* and the outside consultant reports prepared for NYSERDA to evaluate the RPS, which clearly show substantial benefits to New York State and amply demonstrate the range of such benefits, some more easily quantifiable than others. These benefits include expenditures during project development (including consultants as well as jobs associated with physical

development) and on-going lease and in-lieu of tax payments. In addition, the New York Independent System Operator (NYISO) has found that for every 1,000 MW of wind energy on the system, one can expect wholesale price savings of \$300 million/year.

The Commission has recognized the importance of the economic benefits provided by renewable energy in our state, especially when the development of these resources is made possible through the use of ratepayer funds. While clean power generation provides important public health, environmental and energy security benefits, the economic paybacks are also crucial and substantial. The provision that 30 percent of the bid evaluation be conducted based on economic benefits to New Yorkers is sound public policy. Ratepayers fund the program and should be assured that financial benefits flow back to New Yorkers. We also believe that the Commission has erred by making substantial changes in the program when developers and the financial sector clearly place a premium on certainty. The changes in vintage (eligibility date) and eligibility of economic benefits values have undermined confidence in New York's renewable energy programs. While we are cognizant that regulatory risk is a reality for all businesses, we respectfully suggest that the Commission could increase faith in the program and encourage more investment in New York by maintaining the 30% economic benefits provision and allowing all economic benefits from eligible projects to be considered.

C.3. (3) Whether the requirement that "non-incremental" economic benefits not be counted for facilities already in commercial operation should be continued or eliminated;

This requirement should be eliminated. It was contrary to the best interests of the state to make changes to the consideration of economic benefits as it has penalized precisely those companies that have provided added economic and environmental

benefits to New York by investing as soon as they were able to do so, but with the expectation they would be able to bid in an upcoming procurement. Developers must invest hundreds of thousands of dollars in up-front project development costs and spend literally years of on-the-ground effort to be positioned to bid for a NYSERDA contract. Without that upfront work, no proposed project would be able to meet the deadlines included in NYSERDA solicitations; wind projects take numerous years to develop with many steps needed to obtain permits from federal and state agencies and local towns, as well as obtaining the necessary interconnection approvals from the New York Independent System Operator. In some instances, companies have proceeded – in good faith – to develop their projects in anticipation of bidding in a RPS procurement, only to find that New York State, through NYSERDA, has failed to issue a request for bids on time or has unfairly changed the requirements to exclude them or to not allow consideration of the economic benefits provided.

We believe that economic benefits from already operating projects have been allowed for consideration previously. Three projects that won RPS contracts for part of their output in the second solicitation were allowed to bid and awarded additional contracts in the third solicitation. Changing the rules to no longer allow already operating projects to place a value on their in-state economic benefits sends the message that they should not invest time and money in project development in New York State since the eligibility rules may change at any time and as a result, reduce or deny them a chance for an RPS contract.

Rather than penalize those companies that have built their projects prior to receipt of a NYSERDA contract, New York should be pleased that they have done so. First and

foremost, New York has been benefiting from the power that these projects produce and the wholesale power price suppression benefits that their energy output provides. In addition, allowing these projects to compete in the solicitation may very well enable NYSERDA to purchase RECs at a lower price than would otherwise be the case, which would help the State meet its clean energy goals – *within the clearly defined parameters of the original program Order*. Allowing projects to bid in only a portion of their likely output can also help support the voluntary market and enable New York to fund more megawatts of in-state renewables than would be possible otherwise.

Counting only economic benefits that are “incremental” because of a NYSERDA contract is not a rational approach given how clean energy projects are developed and could result in ratepayer money supporting out-of-state projects that will provide limited benefit to New Yorkers over time. A considerable amount of money is spent in local communities during the multi-year development phase of project development, especially for wind energy projects. It makes no sense to exclude these from consideration; rather, the Commission should be comfortable with “rewarding” those developers that have used in-state consultants and goods and service providers during development and not just during construction.

ACE NY believes the state’s best approach to ensuring we have clean energy to serve us now and into the future and to fully reap the benefits it provides, is to use our funds to support projects that will provide long-lasting benefits to New York State and its consumers.

C.4. (4) Whether "incremental" economic benefits should be measured:

(a) As of the date of the particular solicitation;

(b) As of the date of the particular contract award;

(c) Fixed as of the date (January 8, 2010) of the order setting the requirement that non-incremental economic benefits shall not be counted; or

(d) A date certain in advance of the date of the particular solicitation, such as one or two years prior to the date of the particular solicitation.

As discussed above, ACE NY does not believe the evaluation of economic benefits should be limited to “incremental benefits.” NYSERDA should, however, make sure that benefits are only counted once; in other words, if a project bids only a portion of its output in one solicitation, it should not then be able to claim the same economic benefits when bidding additional output in a subsequent solicitation.

While we strongly favor eliminating the restriction on economic benefits, the “second best” alternative among those listed would be *(d) A date certain in advance of the date of the particular solicitation, such as one or two years prior to the date of the particular solicitation.* That would enable projects that are ready for construction and that believe it is financially advantageous to construct prior to being awarded a contract, because of turbine commitments or other critical infrastructure availability, could do so. Having a firm schedule of procurements going out several years becomes even more important under this scenario.

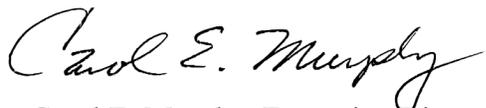
C.5. (5) Whether other changes regarding bid solicitation eligibility or bid evaluation design details and methodologies should be made

ACE NY does not support any other changes to the bid eligibility or bid evaluation details at this time.

III. CONCLUSION

ACE NY strongly supports the proposal for the Commission to allow NYSERDA to set a schedule of procurements for several years in advance and to schedule solicitations, as it deems necessary and appropriate without needing Commission approval for each particular solicitation. Also, as discussed above, ACE NY believes the best approach to ensuring New York meets its clean energy goals is to encourage development of in-state renewable resources by allowing all otherwise eligible projects built after the start of the RPS proceeding to participate in RPS solicitations for 10-year contracts with all in-state economic benefits to count for 30% of the bid evaluation. These parameters make sure the state can meet its objectives while providing the degree of certainty needed to maintain industry confidence to invest in New York.

Respectfully Submitted.



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