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By Electronic Delivery

November 3, 2011

Honorable Jaclyn A. Brillig
Secretary to the Commission
New York State Public Service Commission
Agency Building 3, Empire State Plaza
Albany, New York 12223-1350

RE: Case 03-E-1088: Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard

Dear Secretary Brillig,

Enclosed for filing is the response of the Alliance for Clean Energy New York following the Answer to Public Comments filing submitted on behalf of Covanta Energy Corporation on October 18, 2011. ACE NY remains strongly opposed to the petition of Covanta Energy Corporation requesting inclusion of energy from waste (EfW) as an eligible technology in the Main Tier of New York's Renewable Portfolio Standard Program.

Sincerely,

Carol E. Murphy, Executive Director
Alliance for Clean Energy New York, Inc.

Encl.

**RESPONSE OF THE ALLIANCE FOR CLEAN ENERGY NEW YORK
TO CORRECT MISSTATEMENTS IN COVANTA ENERGY CORPORATION'S POST
COMMENT PERIOD/SUPPLEMENTARY SUBMISSION**

I. Introduction

The Alliance for Clean Energy New York (ACE NY) respectfully submits the following supplementary filing to address misstatements in the filing in this proceeding made by Covanta Energy Corporation on October 18, 2011 regarding performance data and financial support. We believe Covanta Energy Corporation continues to provide misleading information on the definition of “renewable” energy and mischaracterizes the Renewable Portfolio Standard (RPS), and in this particular instance, the method of RPS procurement used by NYSERDA as authorized by the Commission.

II. Environmental Performance Data

Covanta argues that its environmental profile is equal to that of other technologies eligible for the RPS, but its arguments rely on models and data that are neither facility-specific nor current. The submissions by state agencies clearly show that the emissions profiles of Covanta’s facilities are similar to or worse than that of the fossil fuel generation the RPS seeks to replace with renewable generation, especially with regard to dioxin and mercury (see the previous filings that show mercury emissions 14 times higher than coal plants on a per MWh basis). The NYS Department of Environmental Conservation utilized data from 2009, while Covanta references data from 2007. Covanta itself has provided evidence of having worse

emissions as shown in reports submitted to the Maryland Department of Environmental Protection (see report filed by Environmental Advocates in this proceeding) and in Connecticut (see previous comments filed in this proceeding for references to the fines Covanta was required to pay in Connecticut). Furthermore, Covanta, conveniently for their argument, for the most part ignores carbon dioxide emissions in its response filing.

Approving Covanta's petition would allow Covanta's existing facilities to apply for and receive RPS funds under the maintenance tier of the RPS. However, Covanta fails to offer any evidence that any new or upgraded facilities would use a different technology than that of its existing facilities. Providing these facilities with clean energy incentives would not be in accordance with the goals of the RPS.

As we have argued previously, solid waste is not a renewable resource. Covanta argues that this petition is the first time the Commission has been presented with a complete record to make a technology-specific determination, which is incorrect. Solid waste incineration was a widely and extensively discussed technology during the original RPS proceeding, and it was soundly rejected as an eligible technology.

III. Financial Support

Covanta attempts to argue that tipping fees are comparable to tax credit programs or other support provided by the federal government for environmentally preferable technologies. Even if that were true, it would not overcome the many other arguments against approval of Covanta's petition, but it is a misleading comparison. We have never argued that external financial support should disqualify otherwise eligible resources from the RPS. Federal tax credit programs are set by the federal government and are available to many RPS-eligible projects on an equal basis. A waste hauler charging tipping fees, however, sets those fees in negotiation with a local

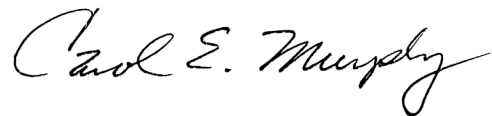
community. Therefore an RPS incentive payment to an incineration facility would allow the incinerator to charge lower tipping fees or, alternatively, would allow the company to submit a lower bid to win the RPS contract. Given that waste incineration is first and foremost a method of solid waste management (as Covanta itself argues and as noted in our previous comments), with electricity generation serving only as a secondary byproduct, the tipping fees are in fact the most appropriate method of financing a project and should not be reduced or eliminated by substituting *statewide ratepayer money* meant for clean electric generation.

Finally, the RPS was established to promote environmentally preferable electric generation in order to improve air quality and combat climate change; economic development and energy security are very important, but secondary considerations. Covanta argues that the state uses economic development as a criterion for awarding RPS contracts and that a renewable energy project “has the ability to demonstrate that its economic development benefits outweigh any savings on price, and should thus tip the scale – and RFP award – in their favor.” (*Covanta response, p. 9.*) While it is true that expected economic development benefits to New York must be presented as part of the bid package and that NYSERDA can use it for up to 30 percent of the weighted bid if that becomes necessary or appropriate, to the best of our knowledge that 30 percent has never come into play since the projects have fallen into a clear list of least cost to highest cost based on bid price alone. The 30 percent would come into play only if the state had to choose between projects offering very close bids in *price only*. Regardless, the state does not pick and choose winners based on the economic development benefits. The process is a competitive, level playing field based on bid price for renewable resources.

IV. Conclusion

ACE NY continues to strongly oppose the inclusion of solid waste incineration in the RPS. Covanta's response arguing that opponents of its petition provided misleading and incorrect information is itself misleading. Furthermore, it is notable that those opposing the inclusion of waste incineration in the RPS, ACE NY included, had *many* arguments against Covanta's petition, but Covanta's response addressed only two of them. Revising the RPS eligibility rules as Covanta has requested will undermine rather than contribute to the progress being made in preserving our environment and growing New York's green energy economy.

Respectfully Submitted.

A handwritten signature in black ink that reads "Carol E. Murphy". The signature is written in a cursive style with a large initial 'C' and 'M'.

Carol E. Murphy, Executive Director
Alliance for Clean Energy New York, Inc.
Albany, NY
November 3, 2011