



Carol E. Murphy
Executive Director

November 5, 2010

Commissioner Garry A. Brown, Chairman
Commissioner Patricia L. Acampora
Commissioner Robert E. Curry, Jr.
Commissioner Maureen F. Harris
Commissioner James L. Larocca
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

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

Dear Commissioners:

The Alliance for Clean Energy New York (ACE NY), as an active party in the Renewable Portfolio Standard (RPS) proceeding, respectfully submits this letter for the Commission's consideration when reviewing petitions in this proceeding.

ACE NY has noticed a disturbing trend whereby winners of RPS solicitations return to the Commission to request a change in their projects and/or contract terms. The petitioners are essentially requesting changes in the procurement rules under which they won in a competitive RPS solicitation. We feel strongly that this procedure is inappropriate and harmful to the competitive procurement process. This letter is not to comment on the merits of the changes to procurement rules requested in any particular petition, but merely on the appropriate process for enacting changes in procurement rules. Reopening contracts or renegotiating the terms of operation for a particular project would unfairly penalize other project developers and send a signal that "gaming" of the system is possible and will be tolerated. Such requests should be denied.

When a solicitation for renewable resources is issued under the RPS program, project developers must evaluate the program rules and decide whether or not to place a bid in keeping with the rules. Winners of each round are expected to fulfill the terms of their contracts to the best of their ability with contract provisions dictating remedies if conditions are not met. Clearly, some project developers may choose not to participate in a particular round of procurement if the rules at the time are deemed difficult for their project to meet. It is entirely

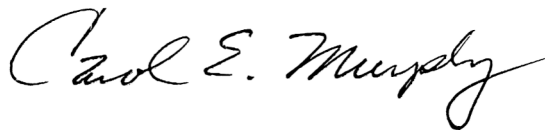
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possible that the change in contract terms requested by a petitioner who won would, if in effect at the time of the procurement, have enabled another project developer to bid and win.

An equally, if not more troubling, possibility is that the change in contract terms requested by a petitioner would have meant that another developer would have won, rather than lost, over the petitioner. To provide a concrete example, which we will also submit as comments in the case of the particular petition of Niagara Generation, the petitioner is requesting that the price paid to them under their contract be raised. But the procurements make awards based primarily on price. Someone who bid in the solicitation lost to Niagara Generation and now Niagara Generation could be requesting a price potentially above that submitted by the next highest bidder when they lost to Niagara Generation. Clearly this is prejudicial to the losers of the procurement and could be used in the future to “game” the system, i.e. win a contract with a low bid and then ask for an increase in price after the fact. We oppose “gaming” of the system, irrespective of technology.

For the reasons discussed above, ACE NY believes that petitions requesting changes to procurement rules after the fact or for revised contract terms that impact competitive position for particular projects be rejected. If, however, both the petitioner and the Commission feel there is merit to the substantive changes to eligibility rules or contract terms requested, a petition should be made requesting that such changes be adopted in *subsequent* solicitations. Any winner that cannot fulfill provisions in keeping with the rules in place when the winners were announced should have to forfeit the contract, or relevant portion thereof, and the newly available funds should immediately be put into a new solicitation for RPS resources.

Sincerely,

A handwritten signature in black ink that reads "Carol E. Murphy". The signature is written in a cursive, flowing style.

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