NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard

COMMENTS OF DIRECT ENERGY SERVICES, LLC

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COMMENTS OF DIRECT ENERGY SERVICES, LLC

Direct Energy Services, LLC, on behalf of itself and its affiliates doing business as energy service companies ("ESCOs") in New York State (collectively, "Direct Energy")[1], are pleased to provide comments on the Staff White Paper on Clean Energy Standard ("White Paper") filed by the Staff of the Department of Public Service ("Staff") on January 26, 2016 with the New York State Public Service Commission ("Commission").

Direct Energy strongly supports the Commission's goal of achieving cleaner emissions through proven market mechanisms and many of the measures identified by Staff to achieve its environmental goals. That said, Direct Energy believes that there are existing competitive market structures that will facilitate achieving the Commission's goal in a transparent and efficient manner. Our concern is that the Commission appears to lack confidence in these structures and proposes mechanisms that could undermine efficient market outcomes, or not produce the desired results. Ultimately, it is the customer that bears the cost of inefficient markets, and our comments are targeted to avoid increasing customer costs unnecessarily.

With regard to the White Paper and several of the recommendations made by Staff in same, Direct Energy believes the Commission should:

[1] Direct Energy's affiliates doing business in New York State include Bounce Energy NY, LLC; Energetix DE, LLC; Gateway Energy Services Corporation; NYSEG Solutions, LLC; Direct Energy Business, LLC; and Direct Energy Business Marketing, LLC.

1. **Minimize the Impact on Pre-Existing Contracts** – Direct Energy strongly believes that significant changes to regulatory environments are best absorbed by the overall market and stakeholders when applied prospectively and do not undermine pre-existing contracts. Regulatory stability promotes confidence in the markets for both consumers and providers, ultimately leading to lower costs. Precedent exists where other states have chosen to pursue aggressive renewable goals but recognized the value of regulatory stability, and hence have implemented prospective compliance requirements. [2]

In the event that Staff and the PSC nonetheless pursue a 2017 implementation date in spite of the harm it is likely to cause, then the Commission should provide for a phased-in Alternative Compliance Payment ("ACP") schedule whereby the ACP is set at a very low level in the early years and gradually increases in later years. This phased-in approach will minimize initial cost impacts to compliance and will enable LSE's and other entities subject to the Commission's jurisdiction in this matter to appropriately account for future costs and avoid significant near-term cost increases to customers under fixed-price or multi-year transactions. This approach would ensure a manageable transition and is a win-win for everyone – the PSC, LSEs and customers.

2. **Provide for Appropriate Banking/Borrowing Provisions** – Direct Energy strongly supports Staff's recommendation to permit banking of excess compliance as well as the inclusion of borrowing provisions in any final Implementation Plan. As Staff already acknowledged, a significant number of states with a Renewable Portfolio Standard ("RPS") allow compliance entities to meet their RPS requirements through banking and/or borrowing mechanisms. Connecticut allows banking in excess of compliance up to 30% per Class and can be used for up to 2 years; compliance entities may also borrow RECs from Q1 – Y2 to meet Y1 requirements.

[2] See, for example, legislation recently passed in Maryland http://mlis.state.md.us/2010rs/bills/sb/sb0277e.pdf

Massachusetts permits banking up to 30% (10% of which can be for solar) and can be used for up to 2 years. Rhode Island permits banking up to 30% per Class and can be used for up to 2 years. New Hampshire permits banking up to 30% per Class and can be used for up to 2 years; compliance entities may also borrow RECs from Q1-Y2 to meet Y1 requirements similar to Connecticut. And Maine allows compliance entities to satisfy one-third of the current year's RPS requirement with banked RECs from the prior year.

The benefits of REC banking and borrowing are well established. In general, they allow LSEs to manage their REC portfolio in a rational way that translates into lower prices for customers. More specifically, banking and borrowing:

- Increases liquidity in the REC market, allowing for more efficient compliance by market participants;

- Enables market participants to avoid price extremes from variations of supply and demand;

- Reduces REC price volatility;

-Creates a steadier cash flow;

- Allows accumulated REC balances and accrued liabilities to be rationally managed;

- Facilitates spot market transactions; and

- May encourage forward market development.

Based on the foregoing, Direct Energy recommends the Commission adopt banking and borrowing provisions consistent with the examples provided above; namely that compliance entities be permitted to bank excess compliance up to 30% per Class and which can be used for up to 3 years (Y2, Y3, and Y4). Moreover, the Commission should allow compliance entities the option of borrowing RECs from Q1-Y2 in the event Y1 REC availability falls short of meeting

total demand. These provisions, in particular the 3 year banking allowance, will allow compliance entities the flexibility and optionality to meet what will likely be year over year changing REC and resource availability uncertainties.

3. **Significantly Modify Staff's Zero Emissions Credit Proposal** – Direct Energy opposes Staff's recommendation to require all LSEs to acquire Zero Emissions Credits ("ZECs") from nuclear power plants that are "operating pursuant to a fully renewed license by the NRC until 2029 or beyond" and that face financial difficulties.[3] While Direct Energy supports the goals set forth in the 2015 State Energy Plan, which include fuel diversity and support for zero emission sources that contribute to New York's emission reductions, Staff's recommendation is nothing short of a flat out subsidy of nuclear units that are not economically efficient and may result in forcing the retirement of the only economic nuclear plant in New York. This guarantee of revenues for nuclear units that are not economically competitive is contrary to the spirit of a robust and mature competitive market and is similar to attempts in the Mid-West to salvage coal plants that cannot compete in the open market place[4].

Moreover, Staff's recommendation smacks of the State picking which technologies are more valuable than others based on reasons not dictated by market forces or state of maturity (i.e. – emerging technologies that may require regulatory incentives to take hold and gain market share versus more mature technologies that may have been supported financially in the beginning and which have competed without incentives for years). This type of manipulation exposes (1) the disparate treatment of upstate and downstate plants, (2) the exclusion of energy efficiency, which is even more "zero" carbon than nuclear, and (3) the introduction of what we see as an unnecessary dichotomy between "renewable" (which is covered in Tiers 1 and 2) and

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[3] White Paper at 30, 31.
[4] See, for example, Ohio Public Utility Commission March 31, 2016 Decision and Order; http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=bc75003b-e885-4346-8ba5-af7dc3cb06b3

“zero emissions,” (which is covered in Tier 3). As currently conceived by Staff, it would appear that only two units are eligible for these credits, one of which has an active LSE affiliate, and thus it is not possible to create a liquid market under these circumstances.

Rather than pretend to create a market, which the ZECs are anything but, we would recommend that Staff work with the unit owners and NYISO to create a new category of generators eligible for recovery through a NYISO adopted rate base mechanism, such as that used for Reliability Must Run Units. In this case, the units are not needed for reliability, but for environmental reasons. Nonetheless, there is no reason such a category could not be created through the NYISO tariff. While typically entities such as ourselves oppose such out of market contracts, given the goals here, we would rather see the generator owners make a FERC filing identifying their costs over a period of determined years, and then entities such as ourselves can include those costs in our pricing. This ensures there is no guess work around an artificial, illiquid “market,” thus eliminating the need for any risk premiums that would otherwise have to be added to entities trading ZEC products. It also precludes the need for affiliate oversight.

Should the Commission, however, adopt Staff’s recommendation in this regard, Direct Energy strongly believes the following safeguards should be put in place:

a. The requirement to purchase ZECs should apply to all nuclear units in New York in order to provide a wider range of suppliers;

b. Strict affiliate rules must be put in place so that all ZEC transactions are conducted at arms’ length (so that companies do not undersell to affiliates or affiliates do not receive cost information that is not transparent to all other market players);

c. Every effort must be made to create a liquid market in which ZECs are purchased and traded; and

d. Creation of a “clearing house” where ZECs are deposited and sold via independent third party (to avoid affiliate abuse and creates price transparency).

Alternatively, instead of providing out-of-market and unjustified revenue guarantees to the state’s fleet of uneconomic nuclear resources, the Commission should consider the examples set by states such as Connecticut[5] and Massachusetts[6] which have recognized that energy efficiency can count toward a “zero emissions” tier rather than identifying nuclear resources as the only eligible technology. This recognition can only serve to amplify existing efforts to increase the adoption of energy efficiency but it will also provide incentives that can drive such adoption to even great penetration rates. It further recognizes that from a cost perspective - the cheapest watt is the one that's never created - and guaranteed revenues for one technology over others may not be the best path forward. Companies like Direct Energy provide, on a daily basis, energy efficiency products and services that help our customers use less of what we sell, energy! Including energy efficiency within the “zero emissions” tier will assist the State of New York in achieving its environmental goals that much more quickly.

[5] Conn. Gen. Stat. §16-1(a)(38), defines “Class III source” as the electricity output from combined heat and power systems with an operating efficiency level of no less than fifty per cent that are part of customer-side distributed resources developed at commercial and industrial facilities in this state on or after January 1, 2006, a waste heat recovery system installed on or after April 1, 2007, that produces electrical or thermal energy by capturing preexisting waste heat or pressure from industrial or commercial processes, or the electricity savings created in this state from conservation and load management programs begun on or after January 1, 2006, provided on and after January 1, 2014, no such programs supported by ratepayers, including programs overseen by the Energy Conservation Management Board or third-party programs pursuant to section 16-245m, shall be considered a Class III source, except that any demand-side management project awarded a contract pursuant to section 16-243m, shall remain eligible as a Class III source for the term of such contract.

[6] The Massachusetts Alternative Energy Portfolio Standard (APS) was established as of January 1st 2009, under the Green Communities Act of 2008. APS offers a new opportunity for Massachusetts businesses, institutions, and governments to receive an incentive for installing eligible alternative energy systems, which are not renewable. Similar to the RPS, it requires a certain percentage of the state's electric load to be met by eligible technologies, which for APS include Combined Heat and Power (CHP), flywheel storage, coal gasification, and efficient steam technologies. These resources contribute to the Commonwealth's clean energy goals by increasing energy efficiency and reducing the need for conventional fossil fuel-based power generation. In 2009, the Suppliers obligation was 1%, and is set to increase 0.5% each following year until 2014, when the growth rate will be reduced to 0.25% per year.

4. **Prohibit Utility Investment and Ownership of Generation of any Type** – Staff recommends that in certain circumstances utility ownership of renewable energy sources or distributed generation may be advisable. However, significant evidence suggests that there is no need for New York's electric distribution companies ("EDC's") to own or procure long term Power Purchase Agreements ("PPAs") from third party developers of renewable energy or distributed generation as there are significant investments already taking place in solar, wind, and other technologies. According to the Solar Energy Industries Association[7], New York ranks 7th nationally in 2014 in installed solar electric capacity with 147MW. In that same year, $451 million was invested on solar installations in New York, an increase of 33% over the prior year. And roughly 631 solar companies employ 8,200 New Yorkers throughout the solar value chain.

Similarly, according to the American Wind Energy Association[8], New York ranks 13th nationally for installed wind power capacity with roughly 1,014 wind turbines online. With nine manufacturing facilities, between 1,000 to 2,000 New Yorkers employed in the wind industry, and $3.4 billion invested to date, there can be no doubt that significant investments have been made and will continue to be made in wind power in New York.

Thus, the Commission should reject Staff's recommendation to permit utility ownership of renewable energy sources or distributed generation and be wary of proposals to include long term PPA's, which can negatively impact the hard fought for efficiencies which currently exist in the wholesale energy market (i.e. – generation responds to appropriate price signals to either run or not run and is appropriately valued when and where it is needed most). There is a long history

[7] http://www.seia.org/state-solar-policy/new-york

[8] http://awea.files.cms-plus.com/FileDownloads/pdfs/New%20York.pdf

of why customers have benefitted from NOT guaranteeing the costs of long term generation, including not perpetuating price signals and technology that are no longer relevant.

In addition to avoiding saddling consumers with long term PPAs that are likely to prove expensive, and utilize obsolete technologies, such contracts interfere with price formation. Holders of long term PPAs or other incentive structures contemplated in the White Paper cause resources that hold such PPAs or incentives to ignore wholesale market pricing signals and run when either they are not needed or when continued output may cause harm to system reliability. The very possibility of such distortion calls for possible changes to NYISO capacity rules that would require such resources to bid in at cost and not below cost because of such PPAs or incentives.

Direct Energy appreciates the opportunity to participate in this proceeding and looks forward to providing additional input as the standards are solidified.

Respectfully submitted,

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