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April 16, 2012

**VIA ELECTRONIC FILING**

Hon. Jaclyn A. Brillling  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12201-1350

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

Dear Secretary Brillling:

Multiple Intervenors hereby submits for filing the annexed “Comments of Multiple Intervenors” in the above-referenced proceeding. The annexed Comments are submitted in response to a notice published in the February 29, 2012 issue of the New York State Register (I.D. No. PSC-09-12-00010-P).

Respectfully submitted,

MULTIPLE INTERVENORS

*S. Jay Goodman*

S. Jay Goodman

SJG/dp

Attachment

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission  
Regarding a Retail Renewable Portfolio  
Standard**

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**Case 03-E-0188**

**COMMENTS OF MULTIPLE INTERVENORS  
(I.D. No. PSC-09-12-00010-P)**

**Dated: April 16, 2012**

**MULTIPLE INTERVENORS  
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## **PRELIMINARY STATEMENT**

Multiple Intervenors, an unincorporated association of over 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments in response to the “Petition for Expansion of RPS Customer-Sited Tier Photovoltaics Program” (“Petition”) filed by the New York State Energy Research and Development Authority (“NYSERDA”) on February 14, 2012 in Case 03-E-0188.<sup>1</sup> This proceeding is addressing the design and the implementation of a Renewable Portfolio Standard (“RPS”), as established and administered by the New York State Public Service Commission (“Commission”). Notice of NYSEDA’s Petition was published in the February 29, 2012 edition of the New York State Register (I.D. No. PSC-09-12-00010-P).

In its Petition, NYSEDA proposes that the existing, mandated investment by customers on photovoltaic (“PV”) generation facilities be doubled. (Petition at 2.) Specifically, NYSEDA’s proposal calls for the currently-planned PV program cost for the 2012-2015 period to be increased from \$54 million annually (*i.e.*, \$216 million in total) to \$108 million annually (\$432 million in total), resulting in incremental expenditures of at least \$216 million. (*Id.* at 3.)<sup>2</sup> NYSEDA projects that if the proposal is adopted, it would support the installation of 269 MW of PV facilities during the 2012-2015 period, a rate of growth characterized as “aggressive but achievable.” (*Id.* at 2.) NYSEDA also projects that adoption of the proposal would satisfy Governor Cuomo’s “NY-Sun Initiative,” which

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<sup>1</sup> Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.

<sup>2</sup> The proposal does not include any funding for the New York State Cost Recovery Fee (*id.* at 3, n.7), which is assessed against all RPS-related customer funds collected by NYSEDA.

calls for the doubling of customer-sited PV capacity from 2011 to 2012, and a quadrupling of that capacity from 2011 to 2013. (Id. at 1.)

With respect to funding, NYSERDA does not propose any immediate increase to customer collections under the RPS. Rather, NYSERDA seeks to reallocate Main Tier funding to pay for its proposal during 2012 and 2013. (Petition at 4-5.)<sup>3</sup> NYSERDA also proposes to defer consideration of 2014 and 2015 funding issues until the Commission's scheduled RPS program review in 2013. (Id. at 5.) In support of its proposal, NYSERDA indicates that it "does not expect this reallocation from the Main Tier to affect either the schedule or outcome of Main Tier procurements in the 2012-2013 timeframe ...." (Id.)

### **SUMMARY OF MULTIPLE INTERVENORS' POSITION**

Initially, Multiple Intervenors has no objections to renewable generation in general, or PV generation projects in particular. Indeed, a number of Multiple Intervenors members currently are exploring various forms of renewable generation projects, including PV, for their own business purposes. That being noted, the RPS program is funded entirely by mandatory surcharges imposed on captive electric customers, and, therefore, it is incumbent upon the Commission to ensure that customer funds are spent wisely and electric rates are no higher than absolutely necessary, particularly given the economic recession and the State's non-competitive electricity prices compared to most states.

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<sup>3</sup> The RPS program is organized into two primary tiers: (a) the Main Tier, which consists predominantly of large-scale renewable generation projects utilizing established technology (e.g., wind generation); and (b) the Customer-Sited Tier, which consists predominantly of smaller, behind-the-fence renewable generation projects often utilizing developmental technologies (e.g., PV generation, fuel cells).

Multiple Intervenors' Comments are organized into the following three points. In Point I, Multiple Intervenors asserts that the Commission should reserve judgment on NYSERDA's proposal until the customer benefits associated therewith have been demonstrated. In its Petition, NYSERDA bases its entire justification for incremental expenditures on PV generation of at least \$216 million during 2012-2015 on Governor Cuomo's 2012 State-of-the-State message, which announced the NY-Sun Initiative. Importantly, however, no other factual justification has been advanced for increased solar expenditures at this time. Along these lines, Multiple Intervenors notes that NYSERDA recently issued its "New York Solar Study: An Analysis of the Benefits and Costs of Increasing Generation From Photovoltaic Devices in New York" ("Study"). As discussed in greater detail below, that Study concluded, under most assumptions analyzed, that the adoption of policies to achieve 5,000 MW of PV generation by 2025 would produce net costs, not benefits. (See, e.g., Study, Executive Summary at ii.) Multiple Intervenors also notes that in describing the NY-Sun Initiative, Governor Cuomo recognized repeatedly the importance of "protecting the ratepayer."

In Point II, Multiple Intervenors asserts that if, arguendo, the Commission determines that the NY-Sun Initiative, as described in Governor Cuomo's 2012 State-of-the-State message, is to be adopted as part of the RPS proceeding without further factual investigation and analysis, then, under such circumstances, NYSERDA's proposal constitutes a reasoned approach that should be adopted only for 2012 and 2013 at this time, with continued implementation in 2014 and 2015 being subject to further analysis as part of the scheduled 2013 RPS program review. While Multiple Intervenors has concerns regarding the substantial cost of NYSERDA's proposal, the proposal appears preferable to approaches advanced by other entities,

such as broad legislative mandates that, if adopted, likely would impose billions of dollars of increased costs on customers.<sup>4</sup>

Finally, in Point III, Multiple Intervenors asserts that if, arguendo, NYSERDA's proposed expansion of PV generation is approved for implementation, then its funding proposal – which calls for a shifting of funds from the Main Tier to the Customer-Sited Tier and the avoidance of increased customer collections – also should be adopted. In isolation, Multiple Intervenors generally does not favor the shifting of funds from the Main Tier to the Customer-Sited Tier because projects funded under the Main Tier historically have required less subsidies on a unitized basis, and, therefore, such shifting is likely to increase the total cost of achieving the RPS goal of 30% of electricity sold at retail in New York coming from renewable generation by 2015. Significantly, however, if the choice before the Commission is between (i) shifting funds from the Main Tier to the Customer-Sited Tier or (ii) increasing already-significant RPS-related collections from customers, then Multiple Intervenors urges the Commission to approve the proposed shifting of funds. Given New York's very high electricity costs and the continuing economic recession, now is not the time to increase RPS collections, or any other mandatory surcharge on customers.

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<sup>4</sup> See, e.g., A. 9149, The New York Solar Industry Development and Jobs Act of 2012 (proposing to mandate that the State's investor-owned electric utilities, the New York Power Authority ("NYPA"), the Long Island Power Authority ("LIPA") and energy services companies ("ESCOs") procure an increasing amount of solar renewable energy credits ("SRECs") through 2025 with a goal of achieving 5,000 MW of installed solar PV capacity by 2025) (hereinafter, the "SREC Bill").

## ARGUMENT

### POINT I

#### **THE COMMISSION SHOULD EVALUATE CUSTOMER BENEFITS AND COSTS THAT MAY RESULT FROM EXPANDING THE PV PROGRAM AS PROPOSED BEFORE RULING ON THE PETITION**

NYSERDA proposes a substantial expansion to the existing Customer-Sited Tier PV program that, it asserts, would contribute both to the RPS goal and to the NY-Sun Initiative. (Petition at 1.) NYSERDA neither quantifies nor describes the incremental customer benefits that may be associated with such expansion, or how such benefits compare to the incremental expenditures proposed. Further, although NYSERDA estimates that its proposed PV expansion may procure 269 MW of incremental installed PV capacity, it does not estimate either the capacity factors associated with those systems or the amount of MWhs they might contribute annually toward the RPS goal. The Petition also fails to demonstrate why the NY-Sun Initiative should be adopted immediately by the Commission as part of the RPS without further analysis, or why NYSERDA's proposal is the optimal way to fulfill the Initiative.

Governor Cuomo's 2012 State-of-the-State message provides the sole justification for the PV program expansion proposed by NYSERDA. Although an environmental goal from the Governor may provide NYSERDA with sufficient grounds to recommend a substantial expansion of the Customer-Sited Tier, and a corresponding contraction of the Main Tier, it does not, in and of itself, provide the Commission with a rational basis to approve such request. Notable in this regard is that Department of Public Service Staff ("Staff") concluded previously that shifting allocations of RPS funding from the Main Tier to the Customer-Sited Tier adversely impacts the cost-effectiveness of the entire RPS program:

Because the benefit cost results of the [Customer-Sited Tier] programs are not as good as the Main Tier, there tends to be more upward pressure on rates from scenarios that place a greater emphasis on the [Customer-Sited Tier]. ... The benefit-cost results ... follow directly from the fact that the cost of the renewable resources in the customer-sited tier, especially solar PV, is much higher per megawatt hour than the cost of the main tier's primarily wind renewable resources. This high-cost disadvantage of solar PV exists even after acknowledging the higher value of solar PV that derives from its favorable output pattern, its possible New York City load pocket location and its ability to avoid distribution costs. ... Therefore, while the Commission should continue to encourage a wide range of types of renewable generation, and while Solar PV has great potential, the level at which solar power gets funded clearly has an important effect on the cost-effectiveness of the overall RPS program.<sup>5</sup>

Accordingly, Multiple Intervenors recommends that the Commission should reserve judgment on the Petition until, at a minimum, there is a demonstration of net customer benefits that are likely to result from the proposed PV expansion.

The wisdom of reserving final judgment on the Petition pending further analysis is underscored by the Study, which NYSERDA was directed to undertake by the Power New York Act of 2011 ("Act"). In its Study, NYSERDA evaluated the costs and the benefits of increasing the installed capacity of PV in New York State to 5,000 MW by 2025 under four distinct policy options, including (i) a scenario modeled after the SREC mandates adopted in neighboring states and (ii) a scenario that, similar to the RPS, would provide upfront incentives to residential and small commercial and industrial projects while using a central procurement model to administer statewide competitive-bidding for larger projects. (Study, Executive Summary at ii-iii.) NYSERDA further evaluated each policy option under low-cost, high-cost, and base case scenarios to estimate a range of potential costs and benefits. (Id. at i.)

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<sup>5</sup> Case 03-E-0188, supra, The Renewable Portfolio Standard: Mid Course Report (filed October 26, 2009) at 74-76.

The Study explains that the base case (i.e., the “most likely scenario”) “is based on a survey of experts by the [United State Department of Energy] and assumed a moderate reduction of the federal tax credit beyond 2016.” (Study, Executive Summary at i.) It concludes that the adoption of policies to achieve 5,000 MW of PV generation by 2025 would produce net costs – not benefits – under most assumptions analyzed. For instance, NYSERDA found that reaching the goal under the base case scenario would: (a) result in net costs of approximately \$2.2 billion; (b) lead to the net loss of 750 jobs statewide due to “the impact of increased electricity rates needed to pay for the PV program”; and (c) increase total electricity bills by as much as 3% per year. (Id. at ES-16, -17, -21.) Although the Study included a scenario analogous to the RPS, it did not model the PV program expansion recommended in the Petition. Thus, although the Study is illustrative of the net costs that may result from an expansion of funding for PV facilities, it does not provide the information necessary to determine what net customer benefits (if any) would be realized by the specific expansion proposed by NYSERDA, or whether the proposals contained in the Petition would “protect” ratepayers if implemented, as required by Governor Cuomo.<sup>6</sup>

For the foregoing reasons, Multiple Intervenors recommends that the Commission reserve judgment on the Petition until presented with additional information demonstrating and quantifying the customer benefits (and costs) associated with the PV program expansion proposed by NYSERDA.

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<sup>6</sup> Governor Andrew M. Cuomo, Building a *New NY*... with you; 2012 State of the State Address (hereinafter, “Address”) as 14, available at <http://www.governor.ny.gov/stateofthestate2012>.

## **POINT II**

### **THE PV EXPANSION PROPOSED BY NYSERDA IS PREFERABLE TO MORE COSTLY ALTERNATIVES**

For the reasons detailed in Point I, supra, Multiple Intervenors advocates that the Commission should reserve judgment on the Petition until additional investigation and analysis is completed. If, arguendo, the Commission determines that the NY-Sun Initiative should be adopted as part of the RPS proceeding without further factual investigation and analysis, then, under such circumstances, NYSERDA's proposal constitutes a reasonable approach that is preferable to certain other, more costly, alternatives.

For instance, the SREC Bill proposed within the New York State Assembly is an alternative to the NY-Sun Initiative that similarly would increase the amount of PV capacity installed statewide. If enacted, the SREC Bill would create a broad and long-lasting obligation for the State's regulated electric utilities, NYPA, LIPA and ESCOs to procure an increasing amount of solar renewable energy credits. The SREC Bill likely would cost billions of dollars to implement, and result in much larger customer impacts, and much higher unitized costs for the procurement of PV capacity, than the proposal advanced by NYSERDA in its Petition.

The SREC Bill would impose a rigid statutory mandate. Although the SREC Bill would delegate substantial authority to the Commission to implement its provisions, it also would constrain the Commission's ability to accelerate or attenuate the level and the pace of SREC procurements in response to changing circumstances (e.g., continued economic distress). Further, certain program modifications would require a legislative amendment to implement; this potentially is problematic because the legislative process can be slow and not particularly well-suited to address issues that may impact implementation.

In contrast, NYSERDA proposes to expand an existing program with existing funds under a regulatory framework that would be shorter-lived and more flexible than the SREC Bill. The flexibility afforded by this regulatory approach would allow the program to be more responsive to current events and program performance, while also accounting for economic conditions and changing electricity market prices. Further, whereas the SREC Bill likely would cost many billions of dollars to implement over several decades, the PV expansion proposed by NYSERDA would utilize a defined budget drawn from existing, unencumbered Main Tier resources during the 2012-2013 period.

Notwithstanding Multiple Intervenors' concerns regarding the actual cost of NYSERDA's proposal, set forth in Point I, the PV expansion set forth in the Petition is far preferable to even more costly alternatives, such as the expensive and rigid framework that would be imposed by the SREC Bill. Accordingly, if the Commission chooses to grant the Petition without further factual investigation and analysis, then, under such circumstances, NYSERDA's proposal is a more measured approach and should be adopted for 2012 and 2013, subject to further analysis as part of the scheduled 2013 RPS program review.

### **POINT III**

#### **IF THE PETITION IS APPROVED, THE SOLAR PV EXPANSION SHOULD BE FINANCED ONLY BY A REALLOCATION OF MAIN TIER FUNDS**

NYSERDA proposes a two-step approach to financing the PV expansion advanced in its Petition: (a) for the period 2012-2013, annually shift \$56 million of unencumbered Main Tier funds to the Customer-Sited Tier; and (b) for the period 2014-2015, NYSERDA recommends that the Commission should consider increasing the RPS surcharge to

pay for the incremental costs of its PV expansion. (Petition at 5.) Multiple Intervenors generally does not favor the transfer of RPS collections from the Main Tier to the Customer-Sited Tier, as proposed by NYSERDA. Projects funded under the Main Tier typically are much less expensive on a unitized basis and, therefore, such shifting of funds can be expected to decrease the amount of renewable energy procured under the Main Tier, thereby increasing the total cost of achieving the RPS goal. If, however, the choice of funding options is between (i) a shifting of funds from the Main Tier to the Customer-Sited Tier or (ii) increasing RPS-related customer collections, then Multiple Intervenors urges the Commission to approve the proposed shifting of funds for the 2012-2013 period. Multiple Intervenors further recommends that the Commission evaluate the possible extension of NYSERDA's proposal into 2014-2015 as part of the scheduled 2013 RPS review and, if that proposal is adopted, that it be funded by additional transfers of unencumbered RPS funds, which is preferable to further increases to customer collection levels.

In considering how to finance any proposed PV expansion, the Commission must reflect that the residents and businesses of New York State (i) bear energy costs that are among the highest in the nation, and (ii) still are impacted by the continuing economic recession. The Commission also should consider the already-very-high cost of the RPS, as well as existing, material investments in PV generation facilities. For example, on January 30, 2012, NYSERDA filed a petition requesting authority to roll unencumbered Customer-Sited Tier collections into the renewable technology programs from which they came.<sup>7</sup> Annual funding for PV would increase by \$17.5 million if that petition is approved.

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<sup>7</sup> Case 03-E-0188, supra, Petition for Modification Proposal Regarding Unallocated CST Funds (filed January 30, 2012).

Against this backdrop, overall RPS collections from customers have increased dramatically in recent years, and are scheduled to continue on an upward trajectory. For instance: (a) in 2009, the Commission authorized overall RPS collections of \$105.6 million; (b) in 2012, such collections will increase to approximately \$203 million; and (c) during the period 2013-2015, RPS collections are scheduled to increase to approximately \$244 million in 2013, and to approximately \$321.2 million in 2015.<sup>8</sup> Thus, the Commission already has approved a more than three-fold increase in RPS collections from 2009 to 2015.

Finally, as noted earlier, the Petition is based solely on a gubernatorial goal, and does not include either an estimate of the incremental customer benefits that may arise from the expanded program or an explanation of why the proposal constitutes the best use of unencumbered Main Tier funds. For instance, in the absence of the Petition, unencumbered funds theoretically could be used to reduce future RPS collections from customers – an approach the Commission recently deemed beneficial with respect to the System Benefits Charge and the Energy Efficiency Portfolio Standard surcharge.<sup>9</sup>

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<sup>8</sup> Case 03-E-0188, supra, Order Authorizing Customer-Sited Tier Program Through 2015 and Resolving Geographic Balance and Other Issues Pertaining to the RPS Program (issued April 2, 2010) at Table 13.

<sup>9</sup> See Cases 10-M-0457, In the Matter of the System Benefits Charge IV, and 05-M-0090, In the Matter of the System Benefits Charge III, Order Continuing System Benefit Charge Funded Programs (issued December 30, 2010) at 2-3 (holding that, “recognizing both the need to provide relief to ratepayers during the current economic downturn and the results of an analysis ... showing that SBC collections currently scheduled for 2011 can be deferred to 2012 and 2013 without detriment to the program, a new schedule of collections is defined that reduces the SBC III assessment for 2011 to zero”); Cases 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, and 07-G-0141, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service, Order Authorizing Efficiency Programs, Revising Incentive Mechanism, and Establishing a Surcharge Schedule (issued October 25, 2011) at 24 (providing the “[w]e will order a revision in collection schedules, designed to reduce cash

In light of these considerations, approval of the incremental expenditures requested by NYSERDA would be premature and ill-reasoned at this time. At a minimum, the appropriate level of funding for various renewable resources in 2014 and 2015 should be addressed as part of the scheduled 2013 comprehensive review of the entire RPS program. If, arguendo, the Commission nonetheless increases expenditures on solar PV as proposed, then Multiple Intervenors agrees with NYSERDA that reallocating the necessary funds from existing Main Tier reserves is preferable to increasing RPS collections from customers. Increased customer collections are unnecessary, and would be extremely detrimental to the State's economy and should not be considered in light of the preceding considerations.

### **CONCLUSION**

For all the foregoing reasons, Multiple Intervenors hereby urges the Commission to rule on NYSERDA's Petition in a manner consistent with these Comments.

Dated: April 16, 2012  
Albany, New York

Respectfully submitted,

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balances [and] [t]his measure will reduce collections below budget authorization levels by approximately \$284 million in 2012, \$198 million in 2013, and \$33 million in 2014").