ACE NY
ALLIANCE FOR CLEAN ENERGY NEW YORK, INC.
Promoting Clean Energy, A Healthy Environment And A Strong Economy, For The Empire State.



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

November 23, 2009

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

Dear Secretary Brilling,

The Alliance for Clean Energy New York respectfully submits the enclosed comments in response to SAPA No. 03-E-0188SP22.

We will also serve all active parties to this case via the electronic listserv.

Sincerely,

Carol E. Murphy

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**New York State**
**Public Service Commission**
**Case 03-E-1088**

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

# COMMENTS OF THE ALLIANCE FOR CLEAN ENERGY NEW YORK (ACE NY) ON SAPA NO. 03-E-0188SP22

## I. INTRODUCTION

The Alliance for Clean Energy New York (ACE NY) respectfully submits the following comments on the Renewable Portfolio Standard (RPS) program. 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. ACE NY has previously submitted comments in this proceeding that address the issues of the SAPA, and we are attaching those comments as well.

Wise state policies in support of investment in clean energy technologies are vital to our environmental well-being and our economic future. We firmly believe that the RPS is crucial to realizing New York's goal of protecting our climate, reducing our dependence on out-of-state fuels, and promoting economic development in the "cleantech" industries of the future.

The Department of Public Service (DPS) and the New York State Energy Research and Development Authority (NYSERDA) are to be commended for their implementation of the RPS

to date. However, we believe the program will be even more successful if our suggestions below are accepted and implemented as rapidly as possible. ACE NY's detailed comments address these main recommendations in response to the questions under consideration by the Commission at this time:

- The Commission should issue an Order that firmly commits the State to an aggressive target for renewable energy procurement. The Commission can reaffirm its commitment to the RPS by expanding its goal to 30% by 2015 – measured in megawatt hours as discussed below – and by enacting program changes to ensure more frequent, regularly scheduled procurements that contract for the full MWh required to meet interim targets. The proposed 30% by 2015 target with an assumption of 100% achievement of the Energy Efficiency Portfolio Standard (EEPS) does not increase the amount of renewables above the existing goal and yet takes two years more to attain it. That is the wrong signal to send the market and clearly is not an aggressive target. In addition, the 30% by 2015 scenario upon which the Commission should base its MWh target should not assume 100% achievement of the EEPS. While ACE NY firmly supports 100% achievement of our efficiency goals, we do not believe we are on the path to meeting the 2015 goal. There is little to be gained from assuming 100% achievement of the EEPS and much to loose if it is assumed but does not occur; far better to err on the side of having too much clean energy than too little.

- The RPS goal should be expressed in terms of absolute megawatt hours (MWh) rather than as a percentage of load. The use of 25% retail sales by 2013 has not been meaningful and useful for implementation purposes given developers monitor MW and MWh. Further, industry participants are much better able to plan future investments if such investments are based on fixed and stable targets. If the Commission determines that the percent of load goal will remain, it should be increased to at least 30% by 2015 to ensure New York can meet its demand for energy with as much clean energy as possible, with an estimated MWh greater than the original 2004 requirement.

- The annual targets should be adjusted upwards to allow NYSERDA to "catch up" to the previously stated targets, which have not been met. Given there are over 7,000 MW of wind in the NYISO interconnection queue and increasing interest in and federal incentives for solar electric systems, as well as increased use of anaerobic digesters and biofuels, we believe attainment of the goals is technically possible and that adequate incentives and state agency coordination for permitting of these facilities would help the State meet its goals.

- ACE NY believes the tiers established under the original RPS Order are still appropriate and effective. We do not support the creation of additional tiers at this time. We would support having NYSERDA explore options for limited targeting of RPS programs – most likely within the Customer-Sited Tier – to help address New York City's concern that its residents are receiving insufficient investment from RPS collections. However, we

believe the Commission would best serve the State and the long-term viability of the proposed 2015 goal by reaffirming its commitment to the RPS program and allowing NYSERDA some flexibility in determining how best to use the marketplace to meet the various considerations of regional equity, fuel diversity, and least-cost resource procurement. We do believe solar thermal installations merit state policy support and should be covered by either the EEPS or the RPS; given it has not yet been covered by EEPS, we support including it with the CST moving forward.

## II. QUESTIONS POSED IN SAPA NOTICE AND ADDRESSED IN STAFF'S MID-COURSE REPORT

### A. Issues Related to the RPS Program in General

**1. The current RPS targets could move downward if energy efficiency investments produce their expected results. To what extent do these likely energy efficiency savings bear on the reasonableness of expanding the goal and time period for RPS? Should the RPS target be increased to reflect that by the year 2015 at least 30% of the electricity consumed in New York State should be generated using renewable resources?**

a. ACE NY supports the expansion of the RPS target, but also believes the RPS goal should be defined as a set number of megawatts or megawatt hours. A percentage based goal is a useful communication and education tool and can be used to guide the amount of megawatt hours identified as the goal, but should not be used as a strict measure over time. Developers need certainty in order to invest in project development, which they must do prior to competing for an RPS contract. If the MWh target fluctuates over time based on efficiency gains – and most importantly, has the ability to decline as is suggested would be the case without an increase to 30% by 2015 – developers will invest elsewhere and not in NY. A defined number of MWh could be a floor, but not a ceiling, to ensure the State meets its target and could be adjusted upwards as needed; however, the Commission must state that it will not adjust the number downward given that uncertainty will drive away investment.

b. ACE NY supports aggressive energy efficiency efforts as the least-cost clean energy alternative. However, we believe the State also needs an aggressive – and expanded – RPS for two important reasons. First, while we support full funding for the Energy Efficiency Portfolio Standard (EEPS) and would prefer to see EEPS meet its schedule and goals, we are doubtful that the 15% by '15 goal will, in fact, be met (for both procedural reasons and because some ramp up time is clearly needed). Efficiency is often hard-to-quantify consistent behavioral change while renewables are measurable energy production. New York needs to ensure that at least 30% of its energy comes from renewable resources by 2015, which means the State needs to commit to a firm level of output as a floor.

c. The amount of renewable generation needed to fulfill an RPS of 30% by 2015 assuming 100% achievement of EEPS is essentially the same as that set as the 25% by 2013 goal in 2004, but allows the State to take two extra years to get there. We can do better. Given we can and should have a more aggressive target, and the concerns over full and verifiable achievement of EEPS, we suggest that the Commission raise the target to 30% by 2015, and calculate a MWh target (with annual interim targets) based on a reasonable assumption of EEPS achievement, such as 60%.

**2. To what extent do investments in renewable resources produce measurable direct, indirect, and induced economic effects in the state as well as more intangible benefits, such as environmental benefits, resource diversity, and security from energy price and supply interruptions? Recognizing there may be various approaches to establishing such benefits, what is the likely range of these benefits?**

a. Investment in renewable resources produces measurable benefits and, along with increased efficiency efforts, is absolutely essential to combating climate change. It is no longer a question of whether or not we can afford to invest in renewable generation; we cannot afford to NOT do so. However, ACE NY firmly believes that the evidence shows that the benefits do outweigh the costs.

b. Studies consistently show that renewable energy provides a variety of benefits compared to fossil fuels. For an example, please consult the recently issued National Academy of Sciences report, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use*. The outside consultant reports prepared for NYSERDA to evaluate the RPS clearly show substantial benefits to New York State and amply demonstrate the range of such benefits, some more easily quantifiable than others. There are clear economic benefits to host communities of Main Tier projects – economic development through expenditures during project development (including consultants as well as jobs associated with physical development) – and renewable energy provides a clear hedge against the volatility of fossil fuel prices. 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.

c. Furthermore, the DPS Mid-Course Report mischaracterizes – and incorrectly considers – generator losses as a "cost." First, we see no reason whatsoever to include the lost revenue to non-renewable generators in the PSC's calculations. We do not believe it is the PSC's mandate to ensure that fossil generators maintain their revenues; in fact, lower costs are generally a desirable outcome for the PSC. Ensuring sufficient generation exists to maintain reliability would be a PSC concern, but nowhere is it suggested that these generators will cease to operate, and furthermore, ensuring reliability is primarily the NYISO's role and is the reason why the NYISO has a capacity market and a demand curve. Yet the DPS Mid-Course Report repeatedly refers to the lost revenue of fossil generators as if this was an important consideration in decision-making on the RPS. The RPS is *supposed* to

result in less use of fossil units; lost revenue to these generators – a sign of decreased emissions – should be taken as a sign of success. Second, it appears that the benefits were calculated only until 2015. The life of these projects extends well beyond that and they will continue to provide benefits long after they are paid for. Failure to account for long-term price and environmental impacts skews the results and lowers the value of the benefits.

3. **To what extent is the direct cost to the ratepayers of electricity generated from renewable resources (RPS subsidies and administrative costs) offset by the value to the public of the avoided pollutant emissions from displaced fossil fuels, wholesale electric market price effects (wholesale price suppression), avoided capacity and distribution costs, and stimulus to the State's economy and to the host community's economy through investments in new facilities?**

   a. As discussed above, the benefits provided by clean energy are many – some local and some widespread. In addition, investments made today will provide benefits for a very long time. New York's wise decision to make a substantial investment in hydropower projects in the past now provides the State with a cheap and clean power supply. Many benefits are not only difficult to quantify but cannot be expressed in monetary terms – breathing cleaner air and lowering childhood asthma rates, for example. While the Commission has historically seen its role as evaluating utility investments to obtain the least-cost resources for ratepayers, evaluating our energy policies today requires a broader view.

4. **Given current economic conditions, the significant upward pressure now occurring on utility rates, and potential other uses for ratepayer-supplied capital, is it in the ratepayer's interests to increase the State's commitment to renewable resources on the scale reflected in the attached schedule? What is the likely effect on utility rates and customer bills of fully funding the RPS program based upon the attached schedule? Are these results within the range of acceptable outcomes? What modifications, if any, are necessary to assure that continued RPS funding produces acceptable results?**

   a. The answer, as indicated throughout these comments and all previous ACE NY comments in this proceeding, is a resounding yes – it is in ratepayer's interests to invest now in clean generation. Given the imperative of addressing climate change coupled with the energy security from fuel diversity and economic development benefits, the benefits to ratepayers outweigh the costs. The impact on bills is equivalent to a cup of coffee or two. In fact, the most aggressive scenario modeled and presented at the November 12, 2009 Technical Conference shows a maximum increase in ratepayers' bills of 1.55% in 2015. Even when combined with other necessary investments that will be reflected in ratepayer bills, that is just "noise" from changes in power prices and average monthly consumption. Renewable energy provides a hedge against volatile fossil fuel prices. It is wise investment and wise public policy.

5. **What is the value of continued renewable investments producing economies of scale and encouraging technological improvements that in turn will drive the costs of these resources further down toward the point where their price will converge with that of conventional generation technologies?**

    a. The answer to this question is technology specific. Some RPS technologies, such as PV, have seen price decreases and may see additional price declines, especially if the State pursues an aggressive program to build demand and achieve economies of scale. In addition, "parity" with fossil generation for smaller Customer-Sited Tier technologies really means parity with retail and not wholesale prices, since from a customer perspective they represent an alternative to grid supply. While the capital costs for many technologies (e.g. PV panels) is largely driven by global demand, there is a strong correlation between installed costs and the size of the local market. Simply put, robust markets driven by state incentive programs encourage more efficient distribution channels, labor deployment, and other efficiencies. More mature technologies such as wind may not see significant price declines from economies of scale. ACE NY believes the question is less of lowering the price of renewables and more a matter of when the prices of renewables and fossil fuels will converge. A national price on carbon and a tightening of demand can both be expected well within the lifetime of Main Tier projects built because of the RPS, which will increase the cost of fossil fuels and bring the two types of generation to parity.

6. **If future Main Tier solicitations do not achieve the targets or result in unreasonable upward pressure on utility rates and bills, should the Commission consider, as an alternative, the costs and benefits of allowing parties to bid in verifiable MWhs resulting from cost-effective energy efficiency investments in the service territories of utilities subject to the jurisdiction of the Commission in lieu of renewable resources?**

    a. No. It is premature to consider this scenario. The Commission has the ability to help the State achieve aggressive renewable energy targets. The Commission can send a strong signal to developers that it is committed to meeting its targets, which will support increased project development and competition, allowing the State to meet its goals without unreasonable cost. Uncertainty in the marketplace causes developers to back off, which decreases competition. In addition, while ACE NY believes the State needs a one-stop shop siting board authorized by the Legislature, in the absence of such a board, the Commission should do everything it can to streamline the review and approvals of renewable energy projects within its jurisdiction. This, too, will help the State meet its targets at a reasonable cost. We think ratepayer bills are far more likely to experience unreasonable upward pressure on rates from a failure of public policy to promote clean energy and the concomitant reliance on fossil fuels, whose price is volatile and likely to rise. The proposal in this question would be appropriate to consider once the Commission has seriously attempted to meet state targets and failed. In addition, the State has the

EEPS, which is already seriously behind; it makes no sense to essentially "commingle" these programs as suggested above.

7. **If future energy efficiency investments made pursuant to the Commission's Energy Efficiency Portfolio Standard do not produce MWhs sufficient to obtain the goal of 15% energy efficiency by 2015, should the Commission consider costs and benefits of altering the solicitation process to permit increased renewable investments?**

    a. Yes. This is substantially different from the previous question for the reasons outlined at the beginning of these comments. First, despite our support for the EEPS and our understanding that the Commission is reluctant to acknowledge that one of its programs is unlikely to meet its goals, the EEPS is simply not on track to achieve 100% of its goal by 2015. To ensure we meet our overall clean energy goals, we may need additional renewables to make up for a shortfall in efficiency efforts. For this reason, we suggest that the Commission establish a MWh goal to be used as a floor, while preserving the option of raising the goal, if need be, to fully meet the 30% by 2015 goal if efficiency efforts do not produce hoped-for results.

8. **Should the RPS program schedule be modified in any manner to reflect outside considerations such as the Regional Greenhouse Gas Initiative or potential national energy legislation?**

    a. No, that is not necessary at this time. New York has shown leadership in the past by adopting an RPS, an EEPS, and initiating and participating in RGGI. States are clearly the leaders in clean energy initiatives and must continue to fill this role given the slow pace of progress on climate change and a national renewable electricity standard at the federal level. In addition, given the number of states with RPSs, we believe that a national program will most likely take into consideration existing state programs and the more renewable resources the state has, the better positioned it will be once a national policy is enacted. Finally, by investing in in-state renewables, New York reaps economic development benefits.

9. **To what extent can and should the Commission encourage utilities and energy services companies (ESCOs) subject to its jurisdiction to enter into financial "hedging" contracts related to the sale of energy into the New York spot market by Main Tier participants and other renewable resource generators?**

    a. ACE NY supports the Commission using its jurisdiction to encourage or require load-serving entities to enter into contracts for energy from renewable energy projects that would help these projects obtain financing and help lower bids to NYSERDA. This would in fact help move New York's central procurement model closer to the RPS structure used in other states without completely transitioning from central procurement to LSE procurement.

## B. Issues Related to the Main Tier

**10. Should the delivery requirement element of the RPS program be changed in any manner?**

a. No. We believe the delivery requirement continues to serve the purpose of leveling the playing field between in-state and out-of-state resources as described by John Saintcross of NYSERDA at the RPS Technical Conference. While we understand the Commission's interest in potentially lower cost out-of –state resources, not only do they have an advantage in the energy markets (without the delivery requirement) but using RPS funds to support out-of-state projects results in substantially fewer economic benefits to New York and means that New York will receive nothing from this investment of ratepayer money once the contract has ended. On the other hand, using ratepayer money for in-state investments results not only in local economic benefits, but the energy generated will continued to be injected into the New York wholesale market after the end of the contract.

**11. Should the "central procurement" model, a key element of the RPS program, be modified in any manner?**

a. Yes. As ACE NY has said repeatedly, there are a number of changes to the Central Procurement model that will make it more effective. The Commission should move the RPS toward a more competitive model by adopting procurement not tied directly to a particular project, but to RECs from eligible projects (i.e. a product-based rather than solely project-based approach). This would necessitate a REC tracking system (NY is the only state in the country without one – see response to Q.36) and a few changes in NYSERDA's procurement process to ensure all of the products (RECs) bought by NYSERDA come from eligible projects. This would provide project developers and third party green power marketers with greater opportunities and could induce investment in additional projects. Furthermore, NYSERDA should not have to return to the Commission for approval for each procurement and should be encouraged to conduct more frequent competitive solicitations, which would provide greater flexibility to accommodate varying development schedules. New York's local permitting process does not lend itself to predictable timeframes for project approval. NYSERDA's current approach of annual solicitations (at best) limits developers' opportunities for seeking contracts that will help to secure project financing or fully evaluate the economics of projects. Finally, but perhaps most importantly, the Commission and NYSERDA should commit to procuring all of the MWh needed to meet targets in each solicitation. NYSERDA has failed to do so in past procurements and the State is behind schedule for RPS compliance. This creates market uncertainty and slows project development and investment.

**12. How should the Main Tier procurement of small-scale hydropower and biogas resources be handled, including consideration of whether this should be done through an ongoing Standard Offer Contract approach? If so, should there be a resources size cap and/or funding cap above which the offer would not be available?**

a. ACE NY has consistently supported the concept of a standard offer for smaller scale resources, which are an important component of a diverse energy supply, but which may not be able to compete on price due to the lack of economies of scale. This certainly applies to small hydropower and biogas projects, but could also apply to small wind projects and even, potentially, large grid-connected solar projects.

**13. Should the maximum lead-time before the in-service date of Main Tier procurements be extended for biomass projects?**

a. ACE NY does not have the expertise to comment on this issue specifically for biomass, however, we would support some flexibility regarding in-service dates for resources given the uncertainties of project permitting, as well as fuel supply for biomass.

**14. What changes, if any, should be made to the "vintage" requirement? Is it appropriate to offer RPS financial support to renewable energy generation facilities that have already obtained financing and been constructed?**

a. The vintage requirement should not be changed (and should not have been changed for the most recent solicitation). Changing the vintage requirement is penalizing 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.

b. NYSERDA has previously awarded contracts to projects that were either under construction or already built. 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 (see page 8 of NYSERDA's *New York State Renewable Portfolio Standard Performance Report*, September 2008). Changing the vintage date sends a very chilling message to all developers. The message is 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, deny them the right to participate in the RPS.

c. 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 at the lowest cost to consumers.

**15. Main Tier contracts currently provide a fixed premium over ten years for every MWh produced. That is, all bidders are ranked on an equivalent basis using their fixed price bids. Should other bidding options, such as but not limited to, contracts for differences, price caps and price floors be considered? If so, how should they be employed in a competitive procurement process and how should the collection schedule be modified to automatically match variations in cost?**

a. The current fixed premium appears to be working and provides an easy-to-understand process and relatively easy-to-evaluate bids. ACE NY also supports further exploration of the contracts for difference approach, although we believe that RPS implementation and procurement should not wait for a determination of whether or not that approach would be useful and workable; it also may be difficult for NYSERDA to evaluate bids easily under a CFD approach. We do not support the use of price caps and believe that caps should not be necessary, especially if the Commission makes the changes to the RPS that we are requesting. By making the system more flexible through a product- and not project-based approach, keeping the vintage date, having more frequent solicitations, and adopting a REC tracking system, etc., the program will be more robust and pricing will be more transparent. The result will be increased competition and lowest cost resource procurement.

**16. Under the current bid scoring mechanism, bid price is weighted at 70% of total score and expected in-state benefits are given a weight of 30% of the total score. Should this weighting be retained? Is the value of in-state economic benefits properly reflected by the current scoring methodology? Is the value of potentially lower-cost resources from outside the State properly reflected by the current scoring methodology?**

a. 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. See our response to Q.10 above.

**Secondary Issues**

**17. Is it more efficient and cost effective for Main Tier procurements to be regularly scheduled by NYSERDA, in consultation with Staff, without the need for individual Commission authorization?**

a. Absolutely. There should be no reason for NYSERDA to return to the Commission for approvals of procurements unless significant program changes are being made.

**18. Should Main Tier funds that become unencumbered be immediately available to NYSERDA for additional Main Tier procurements?**

a. Yes. The RPS will function best if the State shows it is committed to procuring its interim targets. If resources are not built or do not generate as expected and funds are unencumbered, they should be immediately available for the next solicitation.

**19. Is it appropriate for Main tier contracts to have a mandatory term of 10 years? Should there be an exception for fuel-based resources?**

a. The 10-year contract term appears to be working. ACE NY is not opposed to alternative contract lengths. However, if funds are used to finance a fuel-based project that then after a relatively short time stops using eligible fuel, the State's goals are then not being met and we would question if those funds were wisely spent.

**20. What is the impact on geographic equity of the current procurement practices for the Main Tier production? Should geographic equity be considered in future procurements, and if so, how?**

a. ACE NY understands the concerns over so-called geographic equity as expressed by New York City and others, but believes the Commission should refrain from intervening too much in the marketplace, and acknowledge that wind projects are an important and cost effective way of meeting the goals of the RPS but must be located where there is an adequate wind resource. The Main Tier in particular has effectively used the marketplace to obtain the least-cost, most beneficial resources from a variety of perspectives, including environmental benefits and fuel diversity. We do not believe the Commission should direct a set percentage of funds or in another way constrain the use of funds according to utility territory or geographic boundaries.

b. ACE NY would support a Commission direction to NYSERDA to explore opportunities to facilitate increased investment in the downstate area, particularly through the Customer-Sited Tier. ACE NY agrees with NYSERDA staff that the high price load pockets in downstate New York are clearly ideal locations for peak-coincident solar power installations, which have been installed there to a greater extent than elsewhere in the State. We do believe competitive markets and their

strong price signals are best suited to stimulate development of resources in regions of the State where the resource will provide the greatest benefit. Ongoing efforts by the City of New York, Consolidated Edison and others, such as CUNY, with NREL support, are exploring ways of encouraging increased investment within NYC, including identifying the areas within networks most in need of relief from peak day stress on the grid and determining where PV can and should be placed. These efforts, we believe, will help drive the market.

**21. Should any new types of resources be added to the current list of Main Tier-eligible technologies as part of the 2009 review and if so, why?**

a. No, we are strongly opposed to the addition of any new technologies to the Main Tier. The eligibility issue was fully vetted during adoption of the RPS and nothing has changed substantially enough to warrant a reopening of the eligibility criteria.

## C. Maintenance Issues

**22. Should support for Maintenance Resources under the Main Tier be continued and if so, should only shorter-term contracts be awarded?**

a. We do believe it is important to continue the maintenance tier to ensure that New York maintains its existing renewable generation. We have no comment at this time on the appropriate contract length for maintenance tier resources.

## D. Issues Related to the Customer-Sited Tier

**23. Is it reasonable for the Customer-Sited Tier to continue to fund small "behind-the – meter" solar photovoltaic installations? If so, what are reasonable size limitations? What NYSERDA actions are necessary if demand for solar photovoltaic installations increases significantly above the amount of funding budgeted?**

a. The CST program for PV has been successful and should be continued with program changes. The DPS Mid-Course Report overestimates the cost of PV and underestimates the benefits of PV. New York needs to make a commitment to an expansion of the PV program in order to ensure a robust market develops here. The benefits of PV include the difficult-to-quantify environmental and public health benefits, as well as the provision of stable priced power at peak load periods located near the point of use. We believe that NYSERDA can and should do a better job of adjusting rebate levels to avoid boom and bust cycles. A well-designed program with aggressive targets but known, appropriate and declining incentives will support a cost effective PV marketplace. Noticeably absent from the Mid-Course Report was any exploration of the successful PV programs in other states such as California. We encourage the Commission and NYSERDA to find best practices and adapt them to meet New York's needs.

**24. Should the Customer-Sited Tier fund larger solar photovoltaic installations? What would be the parameters for these projects?**

a. Yes. Because of the current restriction of funding to projects below 80 kW, New York is failing to realize the benefits of economy of scale in PV, failing to build a robust PV marketplace, and is arbitrarily limiting the growth of PV among commercial and industrial entities. The RPS should have programs available for systems up to 2 MW in size (which matches the net metering statute) and should explore the use of performance-based incentives for larger systems.

**25. Should the Customer-Sited Tier continue to fund anaerobic digesters installations until virtually all the New York facilities have significant sources of manure and sewage effluent have been tapped for their energy potential? Should anaerobic digester installations at New York facilities having significant sources of food waste be funded?**

a. Yes, we believe New York should continue to fund anaerobic digesters. ACE NY cannot comment on whether or not the program should ensure that all facilities with appropriate fuel sources should be tapped since we do not have sufficient knowledge of how many that would be and what the cost of supporting them would be. However, as a general principle we believe it is important and beneficial to use this renewable resource to the greatest extent possible.

**26. Should the Customer-Sited Tier continue to fund small "behind-the-meter" mature (non-experimental) fuel cell installations? Is the current $1 million per unit cap on funding for supported fuel cells sufficient or should it be increased? Is it reasonable for fuel cells to receive RPS funding if the feedstock powering the fuel cell is a fossil fuel?**

a. The RPS would be doing New York State and our environment a great disservice by selectively eliminating mature fuel cell installations from the Customer-Sited Tier program. Thousands of fuel cell systems are being used around the world today to generate power in stationary and mobile applications – behind the meter. A high cost of energy, requirement for emissions reduction and greater efficiency make New York a key commercial market for this technology. To meet and exceed the objectives outlined in New York's State Energy Plan, the State must include progressive and detailed initiatives that harness the breadth and strength of all of New York's clean energy technologies. In particular, New York State should continue to fund small "behind-the-meter" mature fuel cell installations to encourage the commercialization and adoption of this technology in our State. Mature fuel cell technology is ready for the marketplace; New York must provide incentives to bridge the transition to this clean, reliable form of energy generation.

b. Moreover, the current allocation of funds for small fuel cells must be maintained. Though the current $1 million per unit cap on funding for supported fuel cells is sufficient for the early stages of commercial adoption of fuel cell systems, most of

the fuel cell funds for large fuel cell systems were used last year, and some of the funds for small systems were used. As commercial installations increase in 2009 and 2010, the industry expects to increase this utilization. Accordingly, we support additional allocations set aside for fuel cell funding in the Customer-Sited Tier, or in the alternative, providing incremental increases to these funding allocations over the next five years. Without continued New York State incentives for fuel cell purchases, customers will seek alternative states to install this clean technology.

c. It is completely reasonable for fuel cells to receive RPS funding support if the feedstock powering the fuel cell is a fossil fuel. Fuel cell systems offer the potential for clean, reliable energy generation. These systems can be deployed to operate in parallel with the grid, as independent energy sources or to complement solar and wind generating systems. With a much higher efficiency than conventional power generation, little or no pollution and greater flexibility in installation and operation, they offer commercially viable alternatives to existing power sources.

d. The RPS should be encouraging and expediting the commercialization of all clean energy solutions. The economic and environmental benefits offered by fuel cell technology naturally align with the broad strategies articulated in the New York State Energy Plan. Fuel cell systems provide clean, reliable energy generation. These systems can be deployed to operate in parallel with the grid, as independent energy sources, as energy storage devices, or to complement solar and wind generating systems.

**27. Should the Customer-Sited Tier continue to fund small "behind-the-meter" wind installations? Should the small wind program allow larger turbines up to 600 kW in capacity or some other size?**

a. The CST should continue to fund behind-the-meter wind turbines. The system size must be increased to 2 MW, which is consistent with market demand and with net metering. Experience in Massachusetts shows that an appropriately structured program can facilitate a market for large behind-the-meter turbines at institutional, commercial/industrial and municipal customers. Additional program changes on incentive level and timing of incentive payments also will be necessary.

**28. Should NYSERDA prepare for the Commission's consideration a solicitation that would encourage manufacturers to produce a sufficiently efficient "rooftop" wind turbine that could be sold to homeowners on a broad scale and in a cost effective manner such that it would warrant the award of a large financial prize or a large-quantity purchase contract for the machines?**

a. ACE NY believes this question is misplaced. We do not support the use of RPS funds for research and development or manufacturing. RPS funds should be used to provide incentives for projects that use already commercially available, non-experimental technologies. The Commission and NYSERDA could identify other available funds for this purpose, although we believe it is imperative that any

technology being awarded a significant purchase contract be proven in real world tests against competitors.

**29. What changes are appropriate for the Customer-Sited Tier, including whether any new technologies (such as solar thermal) should be included in that tier?**

a. ACE NY believes that solar thermal technology has been unfairly left out of the state's clean energy programs. It could appropriately be funded through either the EEPS or the RPS program. We would support its inclusion within the CST.

**30. What would be the impact of the Commission funding the Customer-Sited Tier for the period 2010 through 2015 as follows: solar photovoltaic program $294,000,000; anaerobic digester program $71,000,000; fuel cells program $36,600,000; small wind program $18,500,000; solar thermal program $25,800,000; and evaluation $12,329,167?**

a. The impact of the funding scenario above would be that the State would see significant benefits from this wise investment in clean energy. However, we think the evaluation amount is rather high and the PV amount rather low. We understand that the Commission is concerned about the ratepayer impact of the RPS but we believe the benefits far outweigh the costs; a number of other states have significantly high PV goals. A more aggressive and properly designed program would result in additional benefits.

b. With respect to fuel cells, as commercial sales of fuel cell installations increase in 2009 and beyond, it will be critical for New York to maintain a fuel cell incentive program to attract large volume fuel cell system purchases from nationally-recognized commercial enterprises. Without this incentive, commercial customers will introduce this clean technology at their locations in states that maximize their purchasing power. This trend has already begun with customers such as Sprint, T-Mobile, Sysco, FedEx Freight, GENCO, Wegmans and Walmart, who are purchasing and using commercial fuel cells at facilities in other states. The amount of money dedicated to the fuel cell program is best understood only when comparing the proportion set aside for large fuel cell options versus the smaller stationary and material handling fuel cell systems. At the very least, and absent clear direction on this issue, we would encourage maintaining the funding proportions set aside for large and small fuel cells in the last round of the RPS Customer-Sited Tier program.

**31. How should the program accommodate the introduction of new/emerging renewable energy Customer-Sited Tier technologies within the 2015 timeframe?**

a. The RPS should not be used for unproven technologies. New, proven technologies could be considered for funding by the Commission as they arise. Some are likely to fit within the already established categories and will represent a transition within a technology (with a potential example being roof top turbines).

## E. Potential for Utility-Sited Tier

**32. Should a new "Utility-Sited Tier" be established to promote small, utility solar photovoltaic facilities that integrate renewable energy generation into the distribution system at strategic locations? If so, what parameters would be used to define "strategic location"?**

a. ACE NY remains opposed to utilities developing and owning generation resources where the cost of such development is placed in the rate base. Competitive wholesale markets provide many advantages and protect the ratepayer from costs associated with uncompetitive and potentially incomplete projects. In addition, as can be seen from DPS, NYISO and other sources, the availability and efficiency of power generation resources have markedly improved under independent power producer ownership. Rate basing project development improperly exposes ratepayers to the risk of project development, which we believe is more appropriately born by independent power producers. However, there may be instances where utility procurement of small, PV systems may prove useful. This can be done via competitive solicitations.

## F. Program Design and Implementation Issues

**33. Should a new schedule of RPS collections be set through calendar year 2024 based upon a forecast of all future RPS costs? Should additional collections be authorized at this time to fully fund the RPS program based on the attached schedule?**

a. Yes, the Commission should authorize all funding that is forecasted to be necessary to reach newly adopted RPS goals. The most important item for the Commission is a stated commitment to procuring the renewables needed to meet state goals. The funding required may, however, change over time. Therefore, ACE NY suggests the Commission establish a MWh goal as described above, calculate the collections it believes will enable the State to meet that target and then, if collection forecasts are off, revisit the collection schedule in the future.

**34. Is it reasonable to reflect the SBC/RPS charges on utility bills as a single Clean Energy Initiative (CEI) charge? How might this objective be accomplished?**

a. ACE NY would support showing the charges on bills as a single line item, providing that the funds are not actually commingled for administration of the programs. We believe it would be easier for ratepayers to understand a single charge, although listing them separately technically provides more information. The funds should not actually be administered as one since providers of both efficiency and renewables need to know how much money is available for their respective programs in order to make investment decisions.

**35. Given that the RPS program and the Energy Efficiency Portfolio Standard (EEPS) program are still in their early stages, should the Commission conduct another**

**comprehensive review of the RPS program to examine the results of these initiatives and to evaluate the ability of these programs to achieve their intended objectives? Is 2012 too soon for another review?**

a. ACE NY does not think a full review is needed until 2015, unless unusual issues arise. We do believe smaller reviews and at least annual reports of progress, obstacles encountered, and the like are crucial and should be prepared in a timely manner. A review conducted before 2015 would send a bad signal to the development community, who would be concerned about potential adverse program changes. We absolutely believe 2012 would be too soon for another review.

## G. Issues Related to the Voluntary Market

**36. To what extent should the current efforts to develop a more automatic and certificate-based tracking system in New York State, which might accommodate some certificate trading, be continued?**

a. We urge the Commissioners to look at the map that can be found on the US EPA web site using this link: http://www.epa.gov/grnpower/gpmarket/tracking.htm As the map shows, New York is the only state without a decent REC tracking system in place. We are, quite frankly, an embarrassment. The development of an electronic tracking system was the only issue that all RPS stakeholders agreed upon in 2004. It is almost 2010 and the Commission has still failed to authorize or implement one. Yes, we should and must have an electronic tracking system. The fact that the current system continually falls behind in making information available to consumers shows it does not work as it should. While innovative when first developed, New York's system is now sorely out of date and a transition to a more robust renewable energy credit (REC) tracking system is past due. The fact that we are the only state without one speaks volumes, but for additional arguments, the US EPA Green Power Partnership provides the following:

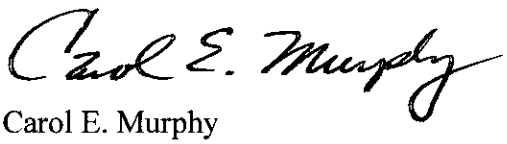
> "RECs provide flexibility to support green power… Since RECs can be sold separately from the underlying electricity, the possibility for fraud can exist unless the RECs are tracked from their point of creation to their final point of use. Tracking ensures every REC represents 1000 kilowatt-hours (or 1 megawatt-hour) of renewable electricity placed on the grid. This is also a challenge for bundled green power products, since in no case do attributes flow directly through power lines to your facility.
>
> One way to protect against double sales is to buy green power products that are independently certified and verified through an audit. This becomes even more important when you buy RECs from outside your state or region.
>
> Your organization can also buy RECs that have been issued by a regional certificate tracking system. These tracking systems issue certificates based on metered generation. In this case, each certificate has a unique serial number. As the RECs are bought and sold, the owner of the REC is tracked. When the RECs are used (sold to final buyer or used to comply with a state renewable portfolio

> standard [RPS]), they are retired within the system in the name of the final buyer. Retirement of RECs ensures that no other person or organization can make claims on the same renewable attributes, sometimes referred to as double counting. Tracking makes it easier to verify and authenticate each REC in type and quantity bought. Tracking systems have been developed for New England, Texas, the mid-Atlantic PJM region, the western states and the upper Midwest..." (http://www.epa.gov/grnpower/gpmarket/tracking.htm).

## III. CONCLUSION

In summary, ACE NY supports a strengthening of the State's commitment to clean energy through increased collection to fund the RPS. We support an extension of the RPS to 2015 to coincide with the State's goals in the EEPS but strongly urge the Commission to set aggressive MWh targets for renewable energy. The Commission has the opportunity to encourage investment in New York and to help lay the foundation for protecting our climate and our public health while increasing energy security in the face of unknown and historically volatile fossil fuel prices.

Respectfully Submitted,



Carol E. Murphy
Albany, NY
November 23, 2009

## ATTACHMENTS

Attachment A: *Comments of ACE NY on SAPA Notice 03-E-0188SP21: Renewable Portfolio Standard Main Tier Solicitation*

Attachment B: *Comments of ACE NY on the RPS 2009 Evaluation Reports*

Attachment C: *Comments of ACE NY on SAPA Notice 03-E-0188SA20*

Attachment D: *Comments of ACE NY on SAPA Notices 03-E-0188SA18 and 03-E-1088SA19*