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

July 20, 2009

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

Dear Secretary Brillling,

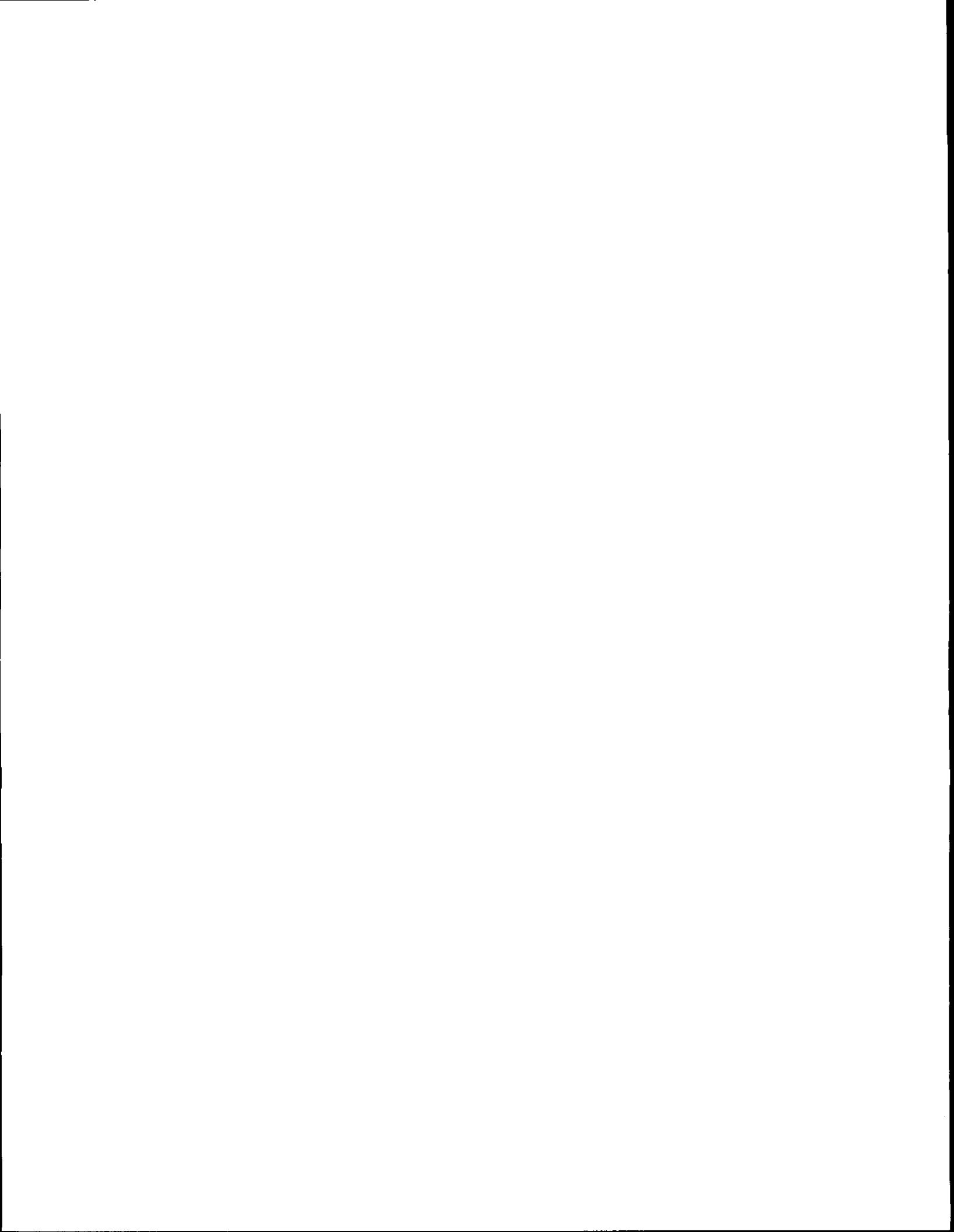
I have enclosed for filing the original and five copies of the comments of the Alliance for Clean Energy New York (ACE NY) regarding SAPA Notice 03-E-0188SP21: Renewable Portfolio Standard Main Tier Solicitation. We will also serve all active parties to this case via the electronic list serve.

Sincerely,

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

Encl.

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**COMMENTS  
OF THE  
ALLIANCE FOR CLEAN ENERGY NEW YORK (ACE NY)**

**On SAPA Notice 03-E-0188SP21:  
Renewable Portfolio Standard Main Tier Solicitation**

**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.

As we have stated in comments submitted in November of 2008, February of 2009, and May of 2009, we believe additional Public Service Commission

("Commission") action to meet the goals of the RPS is long overdue. Therefore, this notice to allow the immediate use of currently available funds should be acted upon in the affirmative as soon as possible, with the following important changes:

1. No explicit "priority" should be given to projects receiving funds from The American Recovery and Reinvestment Act (ARRA) since in most instances such assurances cannot be provided in a timely manner and it is best to leave it to project developers to factor ARRA provisions into their proposals and reflect them in their bid prices.
2. The dates for project completion and "in-service" should be changed. The deadlines are unreasonably short and do not align well with the provisions of ARRA. The PSC appears to be biasing the procurement toward certain types of facilities – or perhaps even certain projects - by the suggested in-service dates.
3. Already operating projects should be allowed to bid. All RPS eligible projects should be allowed to bid in NYSERDA solicitations. It is arbitrary and unfair to exclude certain projects because they were built prior to receipt of a NYSERDA contract. In addition, such a prohibition would run counter to the previously stated Commission goals of encouraging private investment in renewable generation in New York and contracting for the least cost renewable resources to fulfill New York's RPS goals consistent with meeting other stated objectives (such as assuring in-state economic benefits).
4. All economic benefits provided to New York by a project should be considered as part of the 30 percent bid weight given to economic benefits to

New Yorkers. It makes no sense to restrict consideration of benefits to those “incremental” to the award of a contract, which means no pre-construction development costs can be considered. Renewable energy project development entails significant expenditures over several years prior to construction.

In addition, ACE NY believes the Commission should immediately order additional collections to fully fund the RPS and should order NYSERDA to schedule regular procurements to ensure the State meets its RPS goals. The State can most cost effectively meet its clean energy goals through regularly scheduled procurements and program changes to increase liquidity in the renewable energy credit (REC) market as suggested in our previous comments.

## **II. THE COMMISSION SHOULD AUTHORIZE AN IMMEDIATE MAIN TIER SOLICITATION**

The RPS was enacted in 2004 and three main tier solicitations have been held with the last one resulting in signed contracts in early 2008. It has been over a year and a half since the last Main Tier solicitation and yet New York still has not met its interim targets for procurement of renewable energy and is out of funds to do so. This is despite the fact that there are well over 7,000 megawatts of wind energy in the NYISO interconnection queue as well as hydropower, landfill gas and other eligible renewable projects ready for development. Without progress on continuing the RPS, however, those projects will disappear as companies move their resources to other states. The lack of adequate funding for fulfillment of RPS goals was not a surprise; the original implementing order noted that additional collections would be needed. The funds referred to in this notice should have already been used to support renewable energy projects, and

an additional collection schedule should have been already authorized. NYSERDA should be directed to issue a request for bids immediately following authorization by the Commission. In fact, we sincerely hope it is the Commission's desire that Department of Public Service staff work closely with NYSERDA staff during consideration of these comments and development of a Commission Order such that NYSERDA is able to issue a request for bids immediately upon Commission approval and issuance of the Order.

While the SAPA notice indicates the basic parameters for the proposed solicitation will be essentially the same as the most recent solicitation, the substance of the notice does not indicate this is so. In fact, several major policy shifts are proposed that we believe are uncalled for and detrimental to the RPS program as a whole. ACE NY does support continued use of a pay-as-bid auction, providing ten-year contracts (or up to ten-year contracts) and evaluating bids based 70 percent on price and 30 percent on economic benefits to New Yorkers.

The recent evaluation reports for the RPS, prepared by KEMA and Summit Blue, clearly indicate the substantial benefits provided by investment in using our domestic renewable resources through the RPS using these solicitation parameters. Several of the proposed parameters for the solicitation should be changed, however, as discussed more fully below. The goals and the rules of the RPS matter to developers, and major mid-term changes that render investments potentially useless send the wrong market signal at precisely a time in which communities are in dire need of more private investment.

### **III. PROJECTS USING ARRA FUNDS CANNOT BE PRIORITIZED BY NYSERDA'S SOLICITATION PARAMETERS**

The beneficial programs in the American Recovery and Reinvestment Act (ARRA) will be useful for New York's clean energy industry provided the Commission

and NYSERDA act immediately to put a solicitation out; the NYSERDA procurement, however, cannot make proof of ARRA funds a requirement.

The lapse in RPS program funding and lack of regular solicitations is jeopardizing the State's ability to keep the renewable energy industry thriving within its borders. While this would be true regardless of federal policy, it is made more acute by the passage of ARRA. ARRA allows renewable energy projects that begin construction prior to the end of 2010 and that go in service by the end of 2012 to qualify for a 30% investment tax credit (ITC) that can then be converted into a grant from the U.S. Treasury Department. Unlike the traditional federal production tax credit (PTC) this enables renewable energy developers to get the full value of the tax incentive rather than sharing some of that value with a tax advantaged investor. Ultimately, this favorable incentive treatment should lower the cost of renewable energy investments compared to financing a project based on the traditional PTC approach. Further, because wind energy projects in New York tend to have higher capital costs relative to their production than wind energy projects in other parts of the country, the investment tax credit/grant formula favors projects in states like New York.

Despite these new federal incentives, renewable energy projects still require renewable energy credit (REC) revenue to be viable. New York's Renewable Portfolio Standard (RPS) is the only significant means to ensure that REC revenue is reliably available to renewable energy projects.

Project developers and the financial community are making investment decisions for 2010 (and for wind projects, where to allocate turbines already under order are being made over the course of this year and generally sooner rather than later). An immediate

RPS solicitation will enable renewable energy developers to price the full value of New York projects and commit investment dollars in time to take advantage of the beneficial federal incentives.

The requirements for bids, however, cannot "prioritize" projects receiving ARRA funds since projects will not be able to provide assurances of receipt of ARRA funds in order to satisfy such a bid requirement. Rather, NYSERDA can set parameters for project milestones that will allow those bidding to factor their estimation of receipt of ARRA funds into their bids. The market for NYSERDA contracts is competitive and bidders will factor ARRA money into their bids and those doing so will most likely have lower bid prices than others. The Commission's role is to facilitate development of clean energy resources in New York State at the lowest cost to consumers within a reasonable time frame. Whether or not those projects receive ARRA funds or if they are built in 2008, 2009, 2010 or 2011 is immaterial. The preference would be for a continual stream of project development (with regular solicitations) in order to meet New York's 2013 clean energy goal.

#### **IV. THE PROJECT COMPLETION DATES IN THE NOTICE ARE ILLOGICAL AND MUST BE CHANGED**

The notice proposes mandatory in-service dates that are both unreasonable and not in conformance with the provisions of ARRA. The Commission has proposed limiting participation in the next solicitation to projects that will be constructed in 2010, except for biomass and biogas facilities, which can be built in 2010 *or* 2011:

*Hydroelectric and Wind & All Other facilities will be required to be in service on or before January 1, 2011. Biomass & Biogas facilities will be required to be in service on or before January 1, 2012.*



ACE NY believes this timeline is too short given the solicitation will not even be out or bids submitted until fall of 2009 and if past experience is any guide, actual contracts will not be signed for several months after winners are determined. Project developers should not be expected to arrange for construction without the assurance of a signed contract. In fact, the Commission's proposal includes the suggestion (which we strongly oppose) that in service projects cannot bid in the solicitation; therefore, no developer will want to arrange for or begin construction without an assurance of NYSERDA funding since doing so may prevent them from bidding in a subsequent procurement.

In addition, the Commission ostensibly wants to contract with projects that will be able to take advantage of the favorable financial provisions in ARRA. The dates in ARRA, however allow for project completion to occur anytime before the end of 2012 as long as construction has begun prior to the end of 2010. Particularly given that some components of project construction cannot be done during winter in some areas of upstate New York, it does not make sense to limit eligibility to only projects that can be completed and in service in 2010. The Commission's proposal seems designed either to result in a dearth of project bids – because of unachievable parameters – or to reward a select few projects that can meet these stringent requirements. In addition, the Commission should consider having NYSERDA base project completion dates on when a final contract is issued so that developers are not punished by delays in bid evaluation and contract preparation.

**V. ALL PROJECTS MEETING ORIGINAL RPS PROGRAM VINTAGE REQUIREMENTS SHOULD BE ELIGIBLE TO COMPETE FOR FUNDS**

The SAPA notice inexplicably proposes making otherwise eligible projects ineligible for this procurement – and despite a weak statement to the contrary, presumably future ones as well:

*Only facilities that will be placed in service on or after the date of notice of the solicitation will be eligible to bid. Facilities that began operation prior to the date of notice of the solicitation will not be eligible to bid.*

This is penalizing precisely those companies that have provided added economic and environmental benefits to New York. The Commission's proposal fails to acknowledge the realities of the market and project development and contradicts its repeatedly stated desire to encourage private investment in renewable energy projects in New York.

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. The two wind energy projects that will fall wholly within the proposed change in vintage date – Invenergy's High Sheldon Project and E.On's Munnsville Project, as well as at least one hydropower upgrade -- did exactly that.

In recent years, the market for turbine and other necessary equipment (road building supplies and cranes) has been tight and these items must be ordered well in

advance. Companies were then not in a position to cancel their plans to build and therefore found alternative, shorter term methods of financing project construction with the expectation of bidding in future NYSERDA solicitations.

The matter of hydropower upgrades is extremely unclear. The original RPS Order considered hydropower upgrades eligible projects even when built at facilities originally constructed prior to 2003. The proposed change in eligibility contained in this notice for public comment appears to deny eligibility to hydro upgrades. In addition to all of the broad arguments against making this change in eligibility for all otherwise eligible technologies, with regard to hydropower it would essentially prevent the technology from further participation in the RPS at levels that could make a significant contribution. It is extremely difficult and time consuming to build a new hydropower project of any significant size; therefore, other than very small projects, sizeable contributions to the RPS from hydropower need to come from upgrades at existing facilities. In addition, allowing these projects to continue to participate but excluding wind projects that were built post-2003 but prior to a solicitation, would be completely arbitrary and discriminatory.

Finally, 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). Not only is the proposed change in eligibility unfair to those affected directly, but it also 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.

Rather than penalize those companies that have built their projects without NYSERDA contracts, New York should be pleased that they have done so. First and foremost, New York has been benefiting from the pollution-free, fuel-free 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.

With regard to the cost of the RPS program in general, ACE NY understands and appreciates the Commission's concern and interest in protecting ratepayers from unnecessarily high-energy costs. We respectfully suggest that the Commission needs to be taking the "long" view (as expressed in our own state and federal policies) by investing now in stable-priced clean energy for the future and by sending signals to investors that New York will be a stable and liquid market in which to sell RECs. New York's experience with hydropower projects shows that these significant investments in clean energy can pay huge dividends for many years.

In addition, we have suggested in previous comments that the Commission move toward a more competitive RPS 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 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 greater opportunities and could induce investment in additional projects, which provide economic development and price suppression benefits. The lack of a product-based approach and the proposal in this notice for comment that prevents existing, yet RPS eligible, projects from participating exacerbates an already constrained and illiquid marketplace. RECs flowing out of state cannot be counted by New York when the state evaluates its progress in meeting the clean energy goals to which it has committed. Preventing existing eligible projects from participating in solicitations and not allowing product-based compliance with contracts creates a hostile policy climate and a dysfunctional marketplace.

#### **VI. ALL ECONOMIC BENEFITS TO NEW YORK SHOULD BE CONSIDERED**

The Commission has recognized the importance of the economic benefits provided by renewable energy in our state, especially when the development of these resources is made possible through the use of ratepayer funds. While clean power generation provides important public health, environmental and energy security benefits, the economic paybacks are also crucial and substantial. The provision that 30 percent of the bid evaluation be conducted based on economic benefits to New Yorkers is sound public policy. Ratepayers fund the program and should be assured that financial benefits flow back to New Yorkers. ACE NY questions the need for the following suggested provision for this solicitation:

*No weight will be given to economic benefits that are not incremental due to the awarding of an RPS contract.*

Counting only economic benefits that are "incremental" because of a NYSERDA contract is not a rational approach given how clean energy projects are developed and

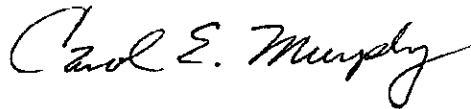
could result in ratepayer money supporting out-of-state projects that will provide limited benefit to New Yorkers over time. A considerable amount of money is spent in local communities during the multi-year development phase of project development, especially for wind energy projects. It makes no sense to exclude these from consideration: rather, the Commission should be comfortable with “rewarding” those developers that have used in-state consultants and goods and service providers during development and not just during construction, which is what this provision would do.

This provision does a disservice to those companies investing in our communities. In addition, it sends the message that companies need not use New York vendors during development, which will adversely affect host communities in the future. Finally, while the 30 percent bid criteria may not have had a significant impact on which projects were chosen in previous solicitations, given that 70 percent of the evaluation is based on price, the failure to include all economic benefits in this and future bids may induce out-of-state projects to bid on NYSERDA contracts. As we have repeated in numerous comment filings in this case, out-of-state projects do not provide local economic benefits to New Yorkers, do not result in infrastructure investments, and fail to even provide price suppressing clean energy once the NYSERDA contract is over. ACE NY believes the state’s best approach to ensuring we have clean energy to serve us now and into the future and to fully reap the benefits it provides, is to use our funds to support projects that will provide long-lasting benefits to New York State and its consumers.

## **VII. CONCLUSION**

The Commission should act immediately to authorize NYSERDA to conduct a solicitation using the \$95 million currently available. In conclusion, the Alliance for Clean Energy New York submits that the solicitation should be open to all RPS eligible facilities, including those built since 2003. The provision that projects receiving ARRA funds will be given priority should be stricken; the ability to use ARRA provisions should be assessed by the developer and factored into their bids accordingly. Required project completion dates should be extended. Requiring construction to be completed in just one year and possibly less depending on when final contracts are signed is unreasonable. All economic benefits to New York should be considered in the thirty percent weighting given to economic benefits, as was the case in the previous solicitations.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Carol E. Murphy". The signature is written in black ink and is positioned below the "Respectfully Submitted," text.

Carol E. Murphy, Executive Director  
Albany, NY  
July 20, 2009

